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APPENDIX

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. 77-1413

JANE ARONSON (FORMERLY KNOWN AS JANE LEOPOLDI),
Petitioner,

vs.

QUICK POINT PENCIL COMPANY,
A MISSOURI CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 4, 1978
CERTIORARI GRANTED JUNE 5, 1978

IN THE
Supreme Court of the United States

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APPENDIX.

CHRONOLOGICAL LIST OF
RELEVANT DOCKET ENTRIES

1975

Nov. 18—Complaint for Declaratory Judgment—fld, summons issd.

Dec. 2—Marshal's Return—to service of summons executed on Jane Aronson, 11/24/75, fld.

1976

Aug. 19—Joint Stipulation of Uncontested Facts—fld.

Oct. 22—Mtn Under Rule 56 FRCP for Summary Judgment on All the Issues in Favor of Deft, Supporting Memo, Affidavit of Jane Aronson, Affidavit of Norbert Leopoldi & Joint Stipulation of Uncontested Facts With Documents Attached Thereto—fld.

Nov. 4—Memo for Clerk—fld. by leave. Parties waive trial and submit cause on joint stipulation of uncontested facts and the pleadings. All briefs to be filed on or before Dec. 1, 1976. cc attys

Nov. 4—Delivered to J. Meredith—Deft's mtn under R. 56 FRCP for summary judgment on all the issues in favor of deft, supporting memo., joint stipulation of uncontested facts with documents attached thereto, affidavit of Jane Aronson, affidavit of Norbert Leopoldi & file.

Nov. 5—Plff's Cross-Mtn for Summary Judgment, Suggestions in Oppos to Deft's Mtn for Summary Judgment, and in Support of Cross-Mtn for Summary Judgment, Affidavit of John G. Goessling—fld.

Dec. 1—Deft's Response to Plff's Cross-Mtn for Summary Judgment and Plff's Supporting Legal Memo—fld.

Dec. 6—Delivered to J. Meredith—Mtn under Rule 56 FRCP for summary judgment on all the issues in favor of deft., supporting memo.; joint stipulation of uncontested facts; plff's cross-mtn for summary judgment, suggestions in oppos to deft's mtn for summary judgment, and in support of plff's cross-mtn; deft's response to plff's cross-mtn, & file.

Dec. 29—Judgment & Findings of Fact & Conclusions of law—fld, Ordered that the contract in question is valid & enforceable so long as plff continues to make & sell the key holder item which is the subject of the contract, b) Plff has the continuing liability to make royalty payments under said contract to deft., c) Plff is ordered to pay to deft the monthly royalty payments for the month of Oct., 1975 & continuing for each successive month thereafter with interest at the rate of 6% per annum, d) The deft shall recover of the plff her costs. CC Attys.

1977

Jan. 12—Notice of Appeal—fld. cc attys. Cert. copy of notice of appeal & 2 Cert. copies of docket entries delivered to USCA.

Dec. 8—Opinion and Judgment of the Court of Appeals for the Eighth Circuit.

1978

Jan. 4—Rehearing and Rehearing En Banc Denied by Court of Appeals for the Eighth Circuit.

Jan. 16—Mandate of the Court of Appeals for the Eighth Circuit.

UNITED STATES DISTRICT COURT
Eastern District of Missouri
Eastern Division

QUICK POINT PENCIL COMPANY,
a Missouri Corporation,
Plaintiff,

vs.

JANE ARONSON (formerly known as
JANE LEOPOLDI),
Defendant.

No. 75-1056C(1).

COMPLAINT FOR DECLARATORY JUDGMENT
(Filed in U. S. District Court November 18, 1975)

COUNT I

Comes now plaintiff, Quick Point Pencil Company, a corporation, and for Count I of its cause of action against the defendant states and alleges as follows:

Jurisdiction

1. Plaintiff is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in Fenton, Missouri.
2. Defendant is a citizen and resident of the State of Illinois.
3. The amount in controversy, exclusive of interest and costs, exceeds the sum of \$10,000. The jurisdiction of this Court rests upon § 1332, Title 28, United States Code (28 U. S. C. § 1332). This action is for a declaratory judgment under § 2201, Title 28, United States Code (28 U. S. C. § 2201) and is brought because there is an actual controversy now existing between the parties.

The Parties

4. At all relevant times, plaintiff was and is engaged principally in manufacturing products for the advertising specialty industry.

5. At all relevant times, defendant was and is a resident of the State of Illinois, engaged in the business of making and licensing inventions.

The Facts

6. During the month of June, 1956 defendant and her agent, Norbert Leopoldi came to plaintiff's offices in St. Louis, Missouri in order to negotiate a licensing agreement with plaintiff for the use of defendant's keyholder invention. At the close of said negotiations, plaintiff set forth its proposal for a licensing agreement in its letter of June 20, 1956 to defendant. Plaintiff's letter is attached hereto, marked as Exhibit "A" and incorporated herein by reference. On June 27, 1956 defendant made a counter-offer to plaintiff. Defendant's counter-offer dated June 27, 1956 is attached hereto, marked as Exhibit "B" and incorporated herein by reference. Plaintiff accepted defendant's counter-offer and returned it to defendant by letter of July 13, 1956, a copy of which is attached hereto, marked as Exhibit "C" and incorporated herein by reference.

7. As a consequence thereof, defendant is and has been engaged in the transaction of business in Missouri and has made a contract in Missouri.

8. Pursuant to said license agreement, Exhibit "B", plaintiff commenced manufacturing keyholders in or about July, 1956. On information and belief, defendant filed Patent Application No. 542677 for said keyholder. Plaintiff paid defendant a five per cent (5%) royalty on all sales of said keyholders from 1956 to 1960. On information and belief, in 1960 defendant's keyholder Patent Application No. 542677 was rejected by the U. S. Patent Office, and plaintiff began paying defendant a two and

one-half per cent (2.5%) royalty on sales of said keyholder in monthly payments to and including September, 1975. During the year 1974 defendant's royalty was approximately \$20,000. Said license agreement provides that plaintiff shall pay the two and one-half per cent (2.5%) royalty to defendant "as long as [plaintiff] continue[s] to sell same," Exhibit "B".

9. Defendant's license agreement, Exhibit "B", provides for royalty payments on an unpatented and unpatentable article for an indefinite duration (which payments have continued for a period of 19 years). As such, said license agreement conflicts with Article I, § 8, Clause 8 of the United States Constitution, and is void and unenforceable.

10. Defendant has demanded the monthly royalty payment for the month of October, 1975, and that plaintiff continue making such monthly royalty payments indefinitely; but said demand has been rejected by plaintiff.

11. A justiciable issue and actual controversy exists, ripe for determination, between the parties as to their respective obligations and rights under all the facts and circumstances as alleged. Therefore, plaintiff seeks a declaratory judgment from this Court for the appropriate relief.

Wherefore, plaintiff prays the Court for an order and decree declaring:

- a. That defendant's aforesaid license is unenforceable;
- b. That plaintiff has no further liability to make royalty payments under said license; and
- c. That plaintiff may recover its costs and reasonable attorney's fees expended herein.

Plaintiff prays for such further relief as this honorable Court may deem necessary and proper.

Count II

Comes now plaintiff, Quick Point Pencil Company, and restates and realleges the averments contained in paragraphs 1

through 11 of Count I as though the same were fully set forth herein.

12. Defendant's aforesaid license is void, invalid and unenforceable for the further reason:

- a. That it is in restraint of trade and opposed to public policy; and
- b. It is indefinite, uncertain and ambiguous with respect to its terms.

13. Defendant's aforesaid license may be terminated by either party thereto because it is for no definite term, and the initiation of this action by plaintiff effectively terminates said license.

14. Defendant's aforesaid license lacks mutuality, and is void, invalid and unenforceable because it may be terminated at will by plaintiff whenever plaintiff decides to discontinue manufacturing keyholders under the license. Therefore, plaintiff seeks a declaratory judgment from this Court for the appropriate relief.

Wherefore, plaintiff prays the Court for an order and decree as set forth in the prayer in Count I above.

WALTER M. CLARK

THOMAS E. WACK

WILLIAM J. TRAVIS

Attorneys for Plaintiff

611 Olive Street, Suite 1950

St. Louis, Missouri 63101

621-5070

Of Counsel:

ARMSTRONG, TEASDALE, KRAMER

& VAUGHAN

EXHIBIT A

QUICK POINT PENCIL COMPANY

4020 Olive

Saint Louis 8, Mo.

The Finest Color Printed Mechanicals

June 26, 1956

Mrs. Jane Leopoldi,
4180 Marine Drive,
Chicago, Illinois.

Dear Mrs. Leopoldi:

The following agreement I think will be suitable and simple enough that it will be thoroughly understandable in its terminology to all of us. We are forwarding to you under separate cover a check for \$750.00 and also three agreements signed. If this is in accordance with your wishes please sign and return two copies to the writer—one for my personal files and one for Quick Point Pencil Company.

Quick Point Pencil Company will have the exclusive right to make and sell keyholders of the type shown in your application, Serial No. 542677, and will start manufacturing within 60 days after you indicate your acceptance of the following terms.

We will pay you \$750.00 right away as an advance payment on royalties; the royalty rate will be 5% of our selling price (not to include shipping charges) on all keyholders which we make in accordance with the design shown in your application, Serial No. 542677.

If we do not make and sell at least one million units by December 31, 1957, you can require us to give up the exclusive license, and if at any time the volume of sales does not meet our expectations, we can cancel the agreement by giving you written notice to that effect.

If you agree to these terms, please indicate your acceptance by signing your name at the bottom of this letter and returning two copies to me, retaining one copy for your files.

In the event of any infringement, as I discussed with Mr. Leopoldi, we will at the time decide between us any action that should be taken. However, we will not agree to enter into litigation until a mutual conference and understanding can be reached between us.

Trusting all the above meets with your entire approval so that we can get started on this item, we remain,

Yours very truly,

/s/ G. A. GOESSLING
G. A. Goessling, *President*

GAG:d

Date: June 27th, 1956

Accepted: /s/ G. A. Goessling
G. A. Goessling

/s/ Jane Leopoldi
Jane Leopoldi

Also check for \$750.00 including this agreement.

I am in agreement with the above letter in its general content with the additional paragraphs as per the attached page. This was discussed and agreed upon between Mr. Goessling and Mr. Leopoldi via Long Distance Telephone on June 27th, 1956.

/s/ JANE LEOPOLDI

EXHIBIT B

N. LEOPOLDI
4180 Marine Drive
Chicago 13
Bittersweet 8-7052

June 27th, 1956

ADDITIONAL PARAGRAPHS TO AGREEMENT-LETTER
OF QUICK POINT PENCIL CO. OF ST. LOUIS, LET-
TER OF JUNE 26th, 1956, SIGNED BY MR. G. A.
GOESSLING, PRESIDENT OF QUICK POINT.

- (1) In the event that the Keyholder Patent Application number 542677 is not allowed within five (5) years, Quick Point Pencil Co. agrees to pay Jane Leopoldi two and one-half percent (2½ %) of sales, at selling prices, as long as you continue to sell same.
- (2) Payments to Jane Leopoldi of Royalties on Keyholders, will be made quarterly, and Jane Leopoldi shall have the right to have a Certified Public Accountant check the Bookkeeping Records of Quick Point Pencil Co., to verify sales, if she so desires; this to be at her expense.

Date: June 27, 1956

Accepted: /s/ JANE LEOPOLDI
Jane Leopoldi
/s/ G. A. GOESSLING
G. A. Goessling

EXHIBIT C

July 13, 1956

Mr. and Mrs. N. Leopoldi,
4180 Marine Drive,
Chicago 13, Illinois.

Dear Mr. and Mrs. Leopoldi:

I am returning the signed supplemental agreement, which was mutually agreed upon. I am sorry that I could not get this to you at an earlier. As you know we were on vacation all last week and I was late in returning to the plant and have been so extremely busy the last few days I did not have an opportunity to go into the matter at once.

For your additional information we are making sample tool cavities of a number of styles; these tools will be completed today and we should have samples Monday.

I notice the springs you sent me are of a number of different finishes and also temper—the nickel-plated ones look far better than the cadmium plate. I do not believe the cadmium plate will stand up satisfactory. We have this item out for quotation and the prices we are receiving indicate that we will be able to buy this spring in the neighborhood of $\frac{1}{2}$ ¢ each; therefore I do not know whether we will be able to use your springs at a 3¢ price. However, I wish you would send me 50 of the nickel-plated springs by return air mail as I would like to try them on these samples we are molding and I will return some of the molded and printed samples to you early next week so that you can see just what progress we are making. We have been hopeful of getting into work on this at a very early date and I will keep you informed as to our progress.

You mentioned to me the permanent match—as I advised you I have quite a large working file on this particular item. We

have samples of the Swedish match which was offered here sometime back. I have also been in correspondence with Dr. Joseph Ellenbogen, in England. We would be very interested in one of these that will work satisfactorily and production cost would be satisfactory. If you have any connections that you can expedite this I think we could work out something with you. Please let me hear from you regarding it and if you have any sample for one of these matches I would be very happy to see it and can return it to you after examination, if you desire me to do so.

Yours very truly,

G. A. GOESSLING, *President*

GAG:d
encl.

ANSWER

(Filed in U.S. District Court January 26, 1976)

(Caption Omitted in Printing)

Comes now defendant and for answer to Count I of plaintiff's Complaint, states as follows:

1. Is without information concerning the truth of the allegations contained in paragraph 1 and calls upon plaintiff for proof of same.
2. Admits the allegations contained in paragraph 2.
3. Admits that in paragraph 3, plaintiff seeks to invoke jurisdiction of this Court pursuant to certain United States Code sections, the existence of which sections is hereby admitted.
4. Admits the allegations contained in paragraph 4.
5. Admits that defendant is a resident of the State of Illinois and has entered into a contract with plaintiff relating to an invention known as a "keyholder".
6. Admits that during June and July of 1956 defendant and her agent, Norbert Leopoldi, negotiated a contract with plaintiff consisting of Exhibits "A", "B", and "C" (attached to plaintiff's Complaint).
7. Denies the allegations contained in paragraph 7.
8. Admits the allegations contained in paragraph 8.
9. Admits that royalty payments were made to defendant by plaintiff for approximately nineteen years, but denies the remaining allegations of paragraph 9; and states further that the contract, as negotiated, was for a period which was terminable by the plaintiff ceasing to make and sell said keyholder.
10. Admits the allegations contained in paragraph 10.
11. Denies the allegations contained in paragraph 11.

Further answering Count I of plaintiff's Complaint, defendant states that said contract is clear and unambiguous in that it provides for a royalty rate which was negotiated to be at a lower rate in the event the keyholder was not a patentable item within a five-year period, and further, in view of said negotiated reduced royalty rate, defendant is entitled to royalties on said keyholder so long as plaintiff continues to make and sell same.

Wherefore, defendant prays the Court that it make and enter its order and decree declaring:

- a) That the aforementioned contract is valid and enforceable so long as plaintiff continues to make and sell the keyholder item which is the subject of the contract;
- b) That plaintiff has the continuing liability to make royalty payments under said contract to defendant, which liability of plaintiff can be terminated by the simple expediency of plaintiff ceasing to make and sell said keyholder item;
- c) That plaintiff be ordered to pay to defendant monthly royalty payments for the month of October, 1975 and continuing for each successive month thereafter;
- d) That defendant recover its cost and reasonable attorney's fees expended herein; and
- e) For such other and further relief as this honorable Court may deem necessary and proper under the circumstances.

COUNT II

Comes now defendant and for answer to Count II of plaintiff's Complaint restates and realleges the answers and averments contained in her answer set out in paragraphs 1 through 11 of Count I above as though the same were fully set forth herein.

12. Denies each and every allegation contained in paragraph 12.

13. Denies the allegations contained in paragraph 13 and states that so long as plaintiff continues to make and sell the keyholder item within the express terms of the contract, said contract continues in full force and effect and is binding on plaintiff.

14. Denies the allegations contained in paragraph 14 and states that the mere fact that plaintiff may terminate the contract by ceasing to make and sell keyholders, does not make said contract invalid for lack of mutuality, but to the contrary, it is expressly shown on the face of the contract that the lower royalty rate was negotiated by mutual consent of the parties hereto on the express basis that said contract and reduced royalty payments thereunder would continue so long as plaintiff made and sold said keyholder item.

Wherefore, having fully answered Count I and Count II of plaintiff's Complaint defendant prays that this honorable Court make and enter its order and decree as has been set forth in her answer to Count I above and for such other and further relief as this honorable Court may deem necessary and proper under the circumstances.

THOMPSON, WALTHER, SHEWMAKER
& GAEBE

By HAROLD C. GAEBE, JR.
Attorneys for Defendant
720 Olive Street, Suite 2807
St. Louis, Missouri 63101
231-0838

(Certificate of Service Omitted in Printing)

MOTION

Under Rule 56 FRCP for Summary Judgment on All the
Issues in Favor of Defendant

(Filed in U.S. District Court October 22, 1976)

(Caption Omitted in Printing)

Defendant, Jane Aronson (formerly known as Jane Leopoldi) and now known as Jane Aronson Hossfeld does by her attorney present this motion for summary judgment under Rule 56 FRCP in her favor on all the issues joined in this action.

This Motion is supported by the following documents:

- 1) Joint Stipulation of Uncontested Facts entered into and between counsel for the respective parties, with attached exhibits.
- 2) Affidavit of Defendant.
- 3) Affidavit of Defendant's agent and former husband, Norbert Leopoldi.
- 4) Supporting Memorandum of Legal Points and Authorities.

Defendant submits there is no genuine issue of any material fact, and the agreement involved in the present litigation can be readily determined by this Court to be a valid and binding agreement, based on the facts and the controlling law.

The Joint Stipulation of Uncontested facts and the affidavits from Defendant and her agent are immediately attached to this Motion and identified respectively as Exhibits 1, 2 and 3.

The Supporting Memorandum of Points and Authorities follow.

LEWIS, RICE, TUCKER, ALLEN &
CHUBB

By D. TROIANI
611 Olive Street, Suite 1400
St. Louis, Missouri 63101
231-5833

Of Counsel:

EDMUND A. GODULA
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Chicago, Illinois 60606
312/726-5342

CROSS-MOTION

Of Plaintiff Quick Point Pencil Company for
Summary Judgment

(Filed in U.S. District Court November 4, 1976)
(Caption Omitted in Printing)

Comes now plaintiff, Quick Point Pencil Company ("Quick Point"), and moves the Court for a summary judgment pursuant to Rule 56, Federal Rules of Civil Procedure.

Quick Point's Cross-Motion for Summary Judgment is based upon the following:

1. Joint Stipulation of Uncontested Facts;
2. Affidavit of John G. Goessling; and
3. Quick Point's Suggestions in Opposition to Defendant's Motion for Summary Judgment, and in Support of Quick Point's Cross-Motion for Summary Judgment.

Quick Point submits that there is no genuine issue as to any material fact in this lawsuit and that Quick Point is entitled to a judgment as a matter of law. Quick Point seeks a declaratory judgment under 28 U. S. C. § 2201 that the royalty license entered into between Quick Point and defendant in 1956 is unenforceable in light of the final adjudication of unpatentability of defendant's licensed keyholder, in light of subsequent United States Supreme Court decisions based upon patent and anti-trust law.

WALTER M. CLARK
THOMAS E. WACK
WILLIAM J. TRAVIS
Attorneys for Plaintiff
611 Olive Street
St. Louis, Missouri 63101

Of Counsel:
ARMSTRONG, TEASDALE,
KRAMER & VAUGHAN

(Certificate of Service Omitted in Printing)

JOINT STIPULATION OF UNCONTESTED FACTS

(Filed in U. S. District Court December 6, 1976)
(Caption Omitted in Printing)

Plaintiff and Defendant, by their respective counsel, stipulate that the following facts are uncontested, but they reserve any objections which they may have to the materiality and relevancy of any such facts to the issues in the case, and to the competency of any such evidence.

1. Plaintiff is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in Fenton, Missouri.

2. At all relevant times, Plaintiff was and is engaged principally in manufacturing products for the advertising specialty industry.

3. At all relevant times, Defendant was and is a resident of the State of Illinois. Her present married name is Jane Aronson Hossfeld.

4. During the month of June, 1956, Defendant and her agent, Norbert Leopoldi, came to Plaintiff's offices in St. Louis, Missouri, in order to negotiate an agreement with Plaintiff for the use of Defendant's keyholder invention. At the close of said negotiations, Plaintiff, by its President G. A. Goessling, set forth its proposal for an agreement in its letter of June 26, 1956, to Defendant. Plaintiff's letter is attached hereto and marked as Exhibit "A". On June 27, 1956, Defendant entered a handwritten notation on Exhibit A which expressed concurrence subject to the additional paragraphs shown on Exhibit B which additional paragraphs reflected an agreement reached by telephone between Mr. G. A. Goessling of Plaintiff and Mr. N. Leopoldi, agent for Defendant. Mr. G. A. Goessling of Plaintiff affixed his signature to the agreement of Exhibit B in St. Louis, Missouri and returned it to Defendant as an enclosure with a letter dated July 13, 1956, Exhibit C.

5. The agreement as reflected in Exhibit "A" of June 26, 1956, in part, gives Plaintiff the exclusive license and right to make and sell keyholders of the type shown in Defendant's patent application, Serial No. 542,677 which was filed with the U. S. Patent Office on October 25, 1955, such application being disclosed by Defendant and her agent to Mr. G. A. Goessling of Plaintiff. The agreement as reflected in Exhibit "B" provides that the royalty rate would be reduced from 5% to 2½% if no patent issued from application Serial No. 542,677, within five years of June 27, 1956, said 2½% royalty of sales to be paid Defendant "as long as you [Plaintiff] continue to sell same".

6. Pursuant to the parties' agreement as shown in Exhibits "A" and "B", Plaintiff commenced manufacturing keyholders on or about July, 1956. Plaintiff paid Defendant a 5% royalty on the gross sales of the keyholders from July, 1956 to June 26, 1961, whereupon the royalty was reduced to 2½% of sales in accordance with the provision of the agreement as referred to in Exhibit "B". On that date, Defendant had not been granted a patent on the application Serial No. 542,677.

7. The keyholders and "keyrules" manufactured and sold by Plaintiff under the above mentioned agreement are described in Plaintiff's Quick Point Company's 1976 Catalogue, a copy of which is attached hereto as Exhibit "D".

8. On January 27, 1959, the parties executed a Supplementary Agreement, Exhibit "E", with respect to royalties on keyholders sold in combination with rulers, watches and other items, said agreement relating only to the royalty rate schedule of the keyholders in combination with rulers, and not otherwise altering any term in the agreement shown by Exhibit "A" and "B".

9. On April 4, 1961, the aforesaid Norbert Leopoldi filed a patent application, Serial No. 104,496, concerning a keyholder invention. Patent No. 3,126,729 was issued to Mr. Leopoldi

on said application on March 31, 1964. A certified copy of said patent is attached hereto as Exhibit "D-1".

10. Under date of April 10, 1961, prior to the final denial of defendant's patent application, Serial No. 542,677, the law firm of Gravely, Lieder and Woodruff, specializing in patent law, on behalf of plaintiff, sent a letter to defendant and her agent, Norbert Leopoldi. Said letter is attached hereto and marked as Exhibit "D-2".

11. Plaintiff's payments of royalties on Defendant's keyholder are the following annual amounts, based upon Plaintiff's fiscal year ending March 31:

<u>Year Ending</u>	<u>Royalties</u>
3-31-57	\$ 1,718.35
3-31-58	4,061.87
3-31-59	7,967.65
3-31-60	5,713.86
3-31-61	7,805.29
3-31-62	5,983.59
3-31-63	6,098.98
3-31-64	5,543.73
3-31-65	6,511.40
3-31-66	7,036.32
3-31-67	7,594.54
3-31-68	8,743.14
3-31-69	11,211.29
3-31-70	13,284.24
3-31-71	15,300.90
3-31-72	18,737.05
3-31-73	20,210.85
3-31-74	21,081.04
3-31-75	21,428.70
9-30-75 (6 months)	7,931.05
	<hr/>
	\$203,963.84

From July, 1957, to September, 1975, Defendant has received a total of \$203,963.84 in royalty payments from Plaintiff, based upon Plaintiff's gross sales of the keyholders.

12. Defendant's keyholder invention was never patented. On October 25, 1955, Defendant filed Patent Application No. 542,677 on the keyholder. In 1956, the United States Patent Office first rejected Defendant's application. In 1956, Defendant filed amendments to the original application, but the Patent Office finally rejected the application in 1957. Following an appeal filed in 1958, the Patent Office (Board of Appeals) on September 27, 1961, made a final rejection of a patent on Defendant's keyholder, as an unpatentable invention. To date, the keyholder remains unpatented.

13. On March 26, 1965 Mr. G. A. Goessling of Plaintiff sent a letter to defendant. Said letter is attached hereto and identified as Exhibit "D-3".

14. In the late 1960's, certain keyholders substantially identical to that exclusively licensed by Defendant to Plaintiff began appearing on the market, and in the 1970's the competition in the keyholder market has grown and continues to grow. Plaintiff's competitors which manufacture and sell such keyholders are listed below. In separate columns corresponding to the competitor's name are listed the Exhibit number of the competitor's catalogue and of an attached example of the keyring manufactured by the competitor:

<u>Name</u>	<u>Catalogue Ex.</u>	<u>Keyholder Ex.</u>
Dard Products, Inc. 912 Custer Avenue Evanston, Illinois 60602	F	O
Colt & Dumont 2375 72 Street, North St. Petersburg, Florida 33710	G	—
Pat Advertising Products P. O. Box 31 Florissant, Missouri 63132	H	—
Barlow 2330 Pontious Avenue Los Angeles, California 90064	K	P

<u>Name</u>	<u>Catalogue Ex.</u>	<u>Keyholder Ex.</u>
Alumna-Line Nelson Boone Co. 4601 Louisville Avenue Louisville, Kentucky 40209	L	—
Hit Sales Co. 115 5th Avenue New York, New York 10003	M	—
Zippo Vernon Co. Newton, Iowa	—	Q

Examples of four additional competing keyholders, of which the manufacturers' identity is unknown, are attached hereto as Exhibits "S" through "V". Examples of Plaintiff Quick Point Pencil Company's keyholders are attached as Exhibit "W" to "Z".

Plaintiff's competitors have made and sold, and continue to make and sell, such keyholders in competition with Plaintiff. To the extent that Plaintiff's competitors do not pay royalties on the keyholders they manufacture, such competitors do not have such a cost, which, of course, affects profits. Defendant has taken no legal action to prevent Plaintiff's competitors from copying, making and selling such keyholders inasmuch as defendant now has no legal right to do so.

15. Plaintiff continues to make and sell keyrings of the type on which Plaintiff previously paid royalties to Defendant; and Plaintiff further has made and sold and continues to make and sell keyholders of a different type on which no royalties are due Defendant.

16. Defendant has demanded the monthly royalty payment for the month of October, 1975, and that Plaintiff continue making such monthly royalty payments as provided in the

agreement; but said demand has been rejected by Plaintiff. As of October 1, 1975, plaintiff ceased making keyholder royalty payments on the advice of counsel.

WALTER M. CLARK
THOMAS E. WACK
WILLIAM J. TRAVIS

Attorneys for Plaintiff

611 Olive Street, Suite 1950
St. Louis, Missouri 63101
621-5070

Of Counsel:

ARMSTRONG, TEASDALE, KRAMER
& VAUGHAN

MARK KEANEY

Attorney for Defendant

611 Olive Street, Suite 1400
St. Louis, Missouri 63101

Of Counsel:

EDMUND A. GODULA
ALAN B. SAMLAN
DOMINIK, KNECHTEL, GODULA
& DEMEUR
20 North Wacker Drive
Suite 4020
Chicago, Illinois 60606
312/726-5342

EXHIBIT A

QUICK POINT PENCIL COMPANY
4020 Olive
Saint Louis 8, Mo.

The Finest Color Printed Mechanicals

June 26, 1956

Mrs. Jane Leopoldi,
4180 Marine Drive,
Chicago, Illinois.

Dear Mrs. Leopoldi:

The following agreement I think will be suitable and simple enough that it will be thoroughly understandable in its terminology to all of us. We are forwarding to you under separate cover a check for \$750.00 and also three agreements signed. If this is in accordance with your wishes please sign and return two copies to the writer—one for my personal files and one for Quick Point Pencil Company.

Quick Point Pencil Company will have the exclusive right to make and sell keyholders of the type shown in your application, Serial No. 542677, and will start manufacturing within 60 days after you indicate your acceptance of the following terms.

We will pay you \$750.00 right away as an advance payment on royalties; the royalty rate will be 5% of our selling price (not to include shipping charges) on all keyholders which we make in accordance with the design shown in your application, Serial No. 542677.

If we do not make and sell at least one million units by December 31, 1957, you can require us to give up the exclusive license, and if at any time the volume of sales does not

meet our expectations, we can cancel the agreement by giving you written notice to that effect.

If you agree to these terms, please indicate your acceptance by signing your name at the bottom of this letter and returning two copies to me, retaining one copy for your files.

In the event of any infringement, as I discussed with Mr. Leopoldi, we will at the time decide between us any action that should be taken. However, we will not agree to enter into litigation until a mutual conference and understanding can be reached between us.

Trusting all the above meets with your entire approval so that we can get started on this item, we remain,

Yours very truly,

/s/ G. A. GOESSLING
G. A. Goessling, *President*

GAG:d

Date: June 27th, 1956

Accepted: /s/ G. A. Goessling
G. A. Goessling
/s/ Jane Leopoldi
Jane Leopoldi

Also check for \$750.00 including this agreement.

I am in agreement with the above letter in its general content with the additional paragraphs as per the attached page. This was discussed and agreed upon between Mr. Goessling and Mr. Leopoldi via Long Distance Telephone on June 27th, 1956.

/s/ JANE LEOPOLDI

EXHIBIT B

N. Leopoldi
4180 Marine Drive
Chicago 13
Bittersweet 8-7052

June 27th, 1956

ADDITIONAL PARAGRAPHS TO AGREEMENT-LETTER OF QUICK POINT PENCIL CO. OF ST. LOUIS, LET- TER OF JUNE 26th, 1956, SIGNED BY MR. G. A. GOESSLING, PRESIDENT OF QUICK POINT.

- (1) In the event that the Keyholder Patent Application number 542677 is not allowed within five (5) years, Quick Point Pencil Co. agrees to pay Jane Leopoldi two and one-half percent (2½ %) of sales, at selling prices, as long as you continue to sell same.
- (2) Payments to Jane Leopoldi of Royalties on Keyholders, will be made quarterly, and Jane Leopoldi shall have the right to have a Certified Public Accountant check the Bookkeeping Records of Quick Point Pencil Co., to verify sales, if she so desires; this to be at her expense.

Date: June 27, 1956

Accepted: /s/ JANE LEOPOLDI
Jane Leopoldi
/s/ G. A. GOESSLING
G. A. Goessling

EXHIBIT C

July 13, 1956

Mr. and Mrs. N. Leopoldi,
4180 Marine Drive,
Chicago 13, Illinois.

Dear Mr. and Mrs. Leopoldi:

I am returning the signed supplemental agreement, which was mutually agreed upon. I am sorry that I could not get this to you at an earlier. As you know we were on vacation all last week and I was late in returning to the plant and have been so extremely busy the last few days I did not have an opportunity to go into the matter at once.

For your additional information we are making sample tool cavities of a number of styles; these tools will be completed today and we should have samples Monday.

I notice the springs you sent me are of a number of different finishes and also temper—the nickel-plated ones look far better than the cadmium plate. I do not believe the cadmium plate will stand up satisfactory. We have this item out for quotation and the prices we are receiving indicate that we will be able to buy this spring in the neighborhood of $\frac{1}{2}$ ¢ each; therefore I do not know whether we will be able to use your springs at a 3¢ price. However, I wish you would send me 50 of the nickel-plated springs by return air mail as I would like to try them on these samples we are molding and I will return some of the molded and printed samples to you early next week so that you can see just what progress we are making. We have been hopeful of getting into work on this at a very early date and I will keep you informed as to our progress.

You mentioned to me the permanent match—as I advised you I have quite a large working file on this particular item. We

have samples of the Swedish match which was offered here sometime back. I have also been in correspondence with Dr. Joseph Ellenbogen, in England. We would be very interested in one of these that will work satisfactorily and production cost would be satisfactory. If you have any connections that you can expedite this I think we could work out something with you. Please let me hear from you regarding it and if you have any sample for one of these matches I would be very happy to see it and can return it to you after examination, if you desire me to do so.

Yours very truly,

G. A. GOESSLING, *President*

GAG:d

encl.

EXHIBIT D

Advertising Gifts from Quick Point, 197



Quick Point

The 1978 Quick Point Catalog formally introduces a group of new products and sales ideas that have been designed to make this the best sales year you have ever had.

And for those important Bicentennial sales you will be making, Quick Point has also created new products you will be proud to offer to your customers.

In addition to these important new features, this catalog has all the Quick Point products that have been favorites of your customers over the years.

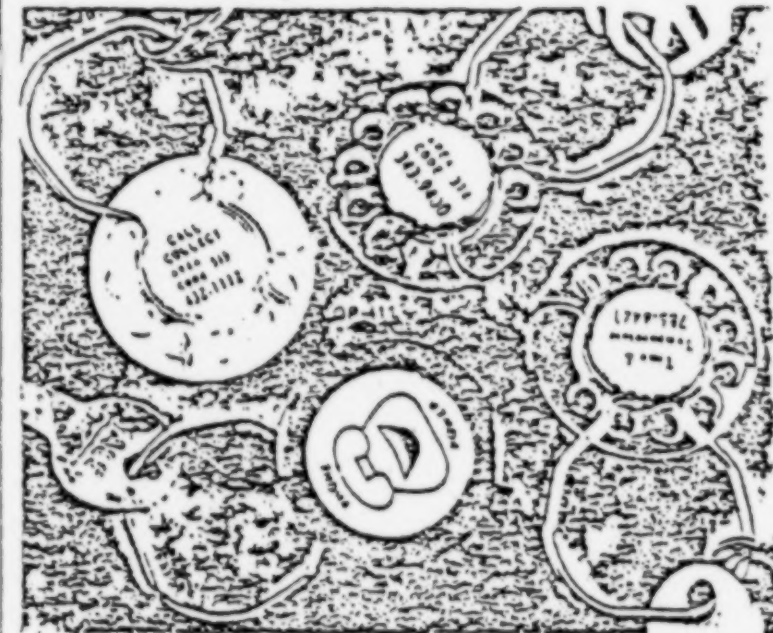
There is also the "Nickel Pickle" Guarantee. You need never again suffer the embarrassment and profit robbing cost of misprints.

Quick Point products, Quick Point service and Quick Point care are your assurance that 1978 will be your best year ever.

New Products and Services	Page
Telephone Showring	2
Spint of 78 Showring	3
Bicentennial Coaster Set	3
Custom Coaster	4
Indian Penny Coaster	4
Indian Penny Showring	8
Meat II Tape Rule	12
Bicentennial Stock Cross	20
Meat Measure	21
"Nickel Pickle" Guarantee	23

NEW for 1978

Telephone Showrings



Miniature telephone dial
(patent pending)

Puts phone number where it will be
seen and remembered

Cases molded in real telephone colors

Dial molded of indestructible clear plastic

Multicolor ad copy at no extra charge

Quantity	250	500	1000	2500	5000
Q-Point	19	17	16	15	14

Case Colors—Black, White and Red.

Dial Color—Clear only.

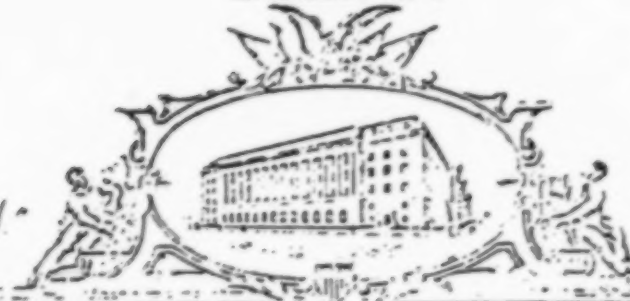
Copy—PRICE INCLUDES TWO COLOR
IMPRINT on ad copy side. 8 lines, 12
characters and spaces per line. Black imprint
only on dial side. Additional colors \$5.00 each.

Logos or Trademarks—See printing plate
charge.

Packed—individual plastic bags.

Shipping Weight—Approx. 8 lbs. per 100.

EXHIBIT D-1



3,126,729

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

Whereas

Norbert Leopoldi,

of

Chicago,

Illinois,

PRESENTED TO THE COMMISSIONER OF PATENTS A PETITION PRAYING FOR THE GRANT OF LETTERS PATENT FOR AN ALLEGED NEW AND USEFUL INVENTION THE TITLE AND A DESCRIPTION OF WHICH ARE CONTAINED IN THE SPECIFICATION OF WHICH A COPY IS HEREIN ANNEXED AND MADE A PART OF THIS, AND COMPLIED WITH THE VARIOUS REQUIREMENTS OF LAW IN SUCH CASES MADE AND PROVIDED, AND

Whereas upon the examination made the said CLAIMANT IS ADJUDGED TO BE JUSTLY ENTITLED TO A PATENT UNDER THE LAW.

NOW THEREFORE THESE Letters Patent ARE IN GRANT UNTO THE SAID

Norbert Leopoldi, his heirs

THE ASSIGNS

FOR THE TERM OF SEVENTEEN YEARS FROM THE DATE OF THIS GRANT

THE RIGHT TO EXCLUDE OTHERS FROM MAKING, USING OR SELLING THE SAID INVENTION THROUGHOUT THE UNITED STATES.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this thirty-first day of March, in the year of our Lord one thousand nine hundred and sixty-four, and of the Independence of the United States of America the one hundred and eighty-eighth.

Attest:

Ernest W. Biddle *Ernest W. Biddle* Edward J. Bremer *Edward J. Bremer*
 Acting Commissioner of Patents *Acting Commissioner of Patents*

UNITED STATES PATENT OFFICE

CERTIFICATE OF CORRECTION

Patent No. 3,126,729

March 31, 1964

Norbert Leopoldi

It is hereby certified that error appears in the above numbered patent requiring correction and that the said Letters Patent should read as corrected below.

Column 1, line 33, after "hereof." insert

In the drawing:

FIG. 1 is a diagrammatic perspective view of a preferred embodiment of the invention; and

FIG. 2 is a sectional view thereof through the central portion of FIG. 1.

The key holder or coin like keeper body 2, a fabrication, comprising top and bottom closure discs and a body portion 3 internally shaped with cam-like sloping contours to define a locking opening 1 extending along a diameter thereof, and having symmetrically related ends, accepts a similarly shaped or contoured spring like key holder ring or key receiving member 1 and allows limited distortion of said key holder to affect a forced, easily operated holding action between contours of aforesaid elements 2 and 1.

The end portions 5 of ring 1 are formed with orthogonal or right angle portions 6, while the sloping contours of body portion 3 are formed to complement the shape of end portions 5, and thus define locking orthogonal or right angle corners 7.

Signed and sealed this 8th day of September 1964.

Attest:

/s/ ERNEST M. SWIDER

(SEAL) *Attesting Officer*

/s/ EDWARD J. BRENNER

Edward J. Brenner

Commissioner of Patents

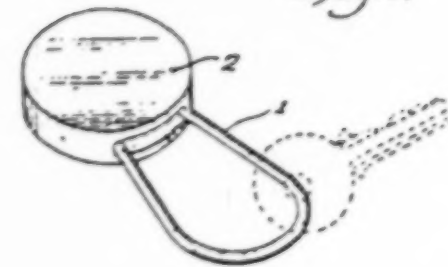
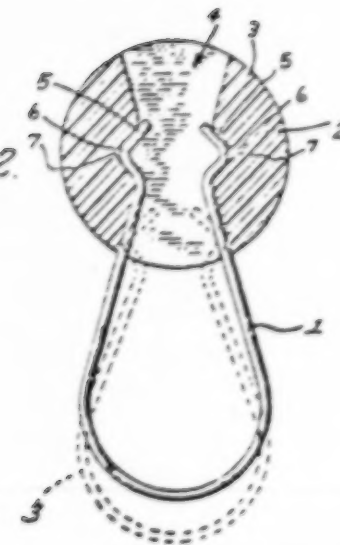
March 31, 1964

N. LEOPOLDI

3,126,729

KEY HOLDER

Filed April 4, 1961

Fig. 1.*Fig. 2.*

CONTINUOUS CORNER

Inventor
Norbert Leopoldi

UNITED STATES PATENT OFFICE

3,126,729

Patented Mar. 31, 1964

3,126,729

KEY HOLDER

Norbert Leopoldi, 4180 Marine Drive, Chicago, Ill.

Filed Apr. 4, 1961, Ser. No. 104,496

1 Claim. (Cl. 70—459)

This invention relates to a low cost key ring or holder with detachable spring-like element to effect easy insertion of keys. Heretofore, such key rings required a secondary locking arrangement at the opening or discontinuity at each end of the ring to permit easy insertion and yet insure function and provide security against inadvertent loss of the keys. The broad application of the detachable spring-like key-holder ring and the non-rotating principle of attachment to the key holder body is increased by the availability of unobstructed areas on the surface of the holder body for decorative designs or advertising messages.

The object of the invention is to provide a low cost, two-piece key ring which will permit easy insertion of keys made possible by the temporary disassembly of the two elements one from another and the threading or otherwise locating of the keys on the spring-like key holder element.

Another object is the elimination of rotation out of a fixed, predetermined orientation of one element with respect to the other.

Another object is the construction of sloped internal contours of the key holder body to compel predetermined orientation and provide security for the keys.

These objects reside in the details of construction and operation as more fully described, claimed and made reference to in the accompanying drawings forming a portion hereof. Accidental disassembly is precluded by selection of suitable gripping force being generated between the key holder ring and key holder body.

Having described the invention, what is claimed and desired to secure by Letters Patent is:

A key holder comprising an elongate substantially planar resilient key receiving member bent into a loop with the end portions thereof positioned adjacent each other and extending generally in the same direction, said end portions each being formed to define orthogonal corner portions projecting outwardly of said member in the plane thereof, and a keeper element co-operating with said key receiving member end portions to retain the keys on said key receiving member, said keeper element comprising a coin like body having an opening extending there-through along a diameter thereof, said opening being defined by wall structures that are formed to complement the shape of said key receiving member end portions, and compress said end portions toward each other when they are inserted together into said opening, whereby said keeper element defines opposed internal orthogonal corner positions that resiliently receive said key receiving member end portions to retain said keeper element on said key receiving member, the ends of said opening being symmetrically arranged with respect to each other.

References Cited in the file of this patent

UNITED STATES PATENTS

1,094,568 Hornich Apr. 28, 1914

FOREIGN PATENTS

21,311 Great Britain Nov. 23, 1892
574,127 Italy Mar. 12, 1958
1,218,407 France Nov. 7, 1960

EXHIBIT D-2

GRAVELY, LIEDER & WOODRUFF
705 Olive Street
St. Louis 1, Missouri

April 10, 1961

Mr. Norbert Leopoldi,
Mrs. Jane Leopoldi,
4180 Marine Drive,
Chicago 13, Illinois.

Dear Mr. & Mrs. Leopoldi:

This is to confirm Mr. Goessling's warning to you that your contemplated license arrangement with another manufacturer for a key holder which you state is shown in a patent application of Norbert Leopoldi will constitute a violation of your license agreement with Quick Point Pencil Company under the Jane Leopoldi application No. 542,677. We remind you that your license agreement is in respect of the disclosure of said Jane Leopoldi application (not merely in respect of its claims) and that even if no patent is ever granted on the Jane Leopoldi application, Quick Point Pencil Company is obligated to pay royalties in respect of any key holders manufactured by it in accordance with any disclosure of said application. This license being exclusive, it follows that you are not free to grant any license to anyone else to make anything disclosed in said application.

Quick Point Pencil Company has fully lived up to its agreement with you and has paid you substantial royalties during the period that it has been a licensee. One would think that your own self-interest would cause you to avoid any action that might interfere with the sales of Quick Point Pencil Company. We trust that, upon reconsideration, you will conclude to carry out

the provisions of your license agreement with Quick Point Pencil Company. If not, proper steps will be taken to enforce the agreement. Among other things, it is obvious Quick Point Pencil Company will be free from its obligation to pay royalties if you authorize some other manufacturer to make a key holder for which Quick Point Pencil Company already has an exclusive license.

Yours truly,

GRAVELY, LIEDER & WOODRUFF
By /s/ JOSEPH GRAVELY

JJG:bsc

cc: Quick Point Pencil Company

Air Mail, Special Delivery

Registered, Return Receipt Requested

P.S. We remind you that you have several times promised to send a drawing of the proposed new holder to Mr. Goessling.

EXHIBIT D-3

ST. LOUIS PLASTIC MOULDING CO.
Plastic Parts of Every Description
4605 Olive Street
St. Louis, Mo. 63108

March 26, 1965

Miss Jane Leopoldi
4280 Marine Drive
Chicago, Illinois

Dear Miss Leopoldi:

Please be advised that we will continue our payments to you as per our original agreement and whatever disposition you care to make of these payments is entirely your affair and not the affair of Quick Point Pencil Company.

We do not wish to be arbitrary in this matter but on the other hand, Quick Point is only concerned with its' original agreement concerning this and from their point of view, how you dispose of this money is entirely your affair and not the affair of Quick Point Pencil Company.

I am quite sure if you give this thought, you will be in agreement with our attitude.

Kindest regards,

Yours very truly,

/s/ G. A. GOESSLING
G. A. Goessling

GAG:jp

cc: McDonnell & McDonnell

EXHIBIT E

January 27, 1959

SUPPLEMENTARY AGREEMENT

I, Norbert Leopoldi, acting with power-of-attorney for my wife, Jane Leopoldi, agree to allow G. A. Goessling and Quick Point Pencil Co. now operating under contract license under Key Holder Patent Application No. 542677 to manufacture items embodying subject matter of this patent of items not confined to a straight utility key holder.

For example, as a key holder in combination with a ruler or watch, or other dissimilar items to establish these items on a unity royalty basis of three-quarters of a cent ($\frac{3}{4}\text{¢}$) per unit.

The present status of key holder only now under contract license will remain the same on a percentage basis as per our existing contract whether sold in the advertising field or in the retail merchandising field.

The Supplementary Agreement only effects items where an additional component is added to the key holder. All items made in this category are to carry a unit royalty of three-quarters of a cent ($\frac{3}{4}\text{¢}$) irrespective of quantity.

The above is an additional agreement and existing contracts remain in effect as written.

/s/ NORBERT LEOPOLDI
Norbert Leopoldi

/s/ QUICK POINT PENCIL
G. A. GOESSLING

EXHIBIT F



EXHIBIT G

KR SERIES

Caught on the horns of an
advertising dilemma?
Solve it fast with our
KR Series of key rings!

The KR650 Beaumont with eye-catching 2-color imprint is one sleekly styled key ring that's as flexible as it is economical. For one low price, choose the same or different copy for both sides or team up for a co-op opportunity with logo on the front and your message on the back.

For super savings, choose the Beaumont KR675 with 2-color imprint on one side and for a slight additional charge, have up to 4 lines of custom copy hot stamp imprinted on the back.

Of course the KR600 Twin-Mate is always a favorite. All-chrome snap-out ring holds keys without bunching and thin width eliminates bulging pockets. And, select one design for the Twin-Mate and that die can be used at no extra cost for the Beaumont, Tele-a-Dial and Tele-a-Cord alike.

Choose a photo reproduction of any of the KR Series and for a one-time-only processing charge, you can have the whole family of "Peeples" including the Jolly Giant, the Tele-a-Dial and our latest addition, the Tele-a-Cord.

ORDERING INFORMATION

KR600 HOLDER COLORS: Black, Medium Blue, Forest Green, Navy, Orange, Red, White, Mod Yellow.

KR650, KR675 TAG COLORS: Black, Navy, Red, White, Yellow.

KR650, KR675 BORDERS COLORS: Silver unless specified. Optional colors available: Black, Blue, Brown, Gold, Green, Orange, Red.

FINDING COLORS: Chrome only.

IMPRINT AREA: KR600, KR650—Logo or 4 lines of copy in 1" circle on 2 sides. Copy can be different on each side and 2 color imprint is included in the price. KR675—Logo or 4 lines of copy on 1 side or 2 color imprint included in price.

CURVED COPY CHARGE: \$1.50 (C) per color.

METHOD OF IMPRINT: Hot stamped paper inserts with permanent mylar laminate.

INSERT COLORS: Black, Blue, Gold, Green, Orange, Red, Silver, White, Wood Grain, Yellow.

IMPRINT COLORS: Black, Blue, Brown, Gold, Green, Orange, Red, Silver.

PACKAGING: Bulk packed in treasure cartons, for retail bagging, add \$3 (A) each.

LESS THAN MINIMUM: \$8.00 (C) set up charge. Absolute minimum: 125 pieces.

ART, DIE AND EXTRA CHARGES: See pages 19 and 20.

Advertiser Price	250	500	1,000	2,500	5,000
KR600 (1 way copy)	31	30	28	25	22
KR650 (1 way copy)	39	38	37	33	30
KR675 (1 way copy)	39	38	37	34	31
PH600 (photo)	37	36	34	30	27
PH650 (photo)	45	44	43	38	35
PH675 (photo)	35	34	32	29	26

NOTE: PH600 and PH650 requires a 1-time photo processing charge of \$25.00 (C). KR600 and KR650 include 2 color, 2 position imprint. KR675 includes 2 color, 1 position imprint. The flat back of the KR675 can be hot stamp imprinted up to 4 lines at an extra charge of \$3 (C) each.

IDEA!

Refer to page 21 and choose any stock cut with no extra art or set charges.

Colt & Dumont



EXHIBIT K

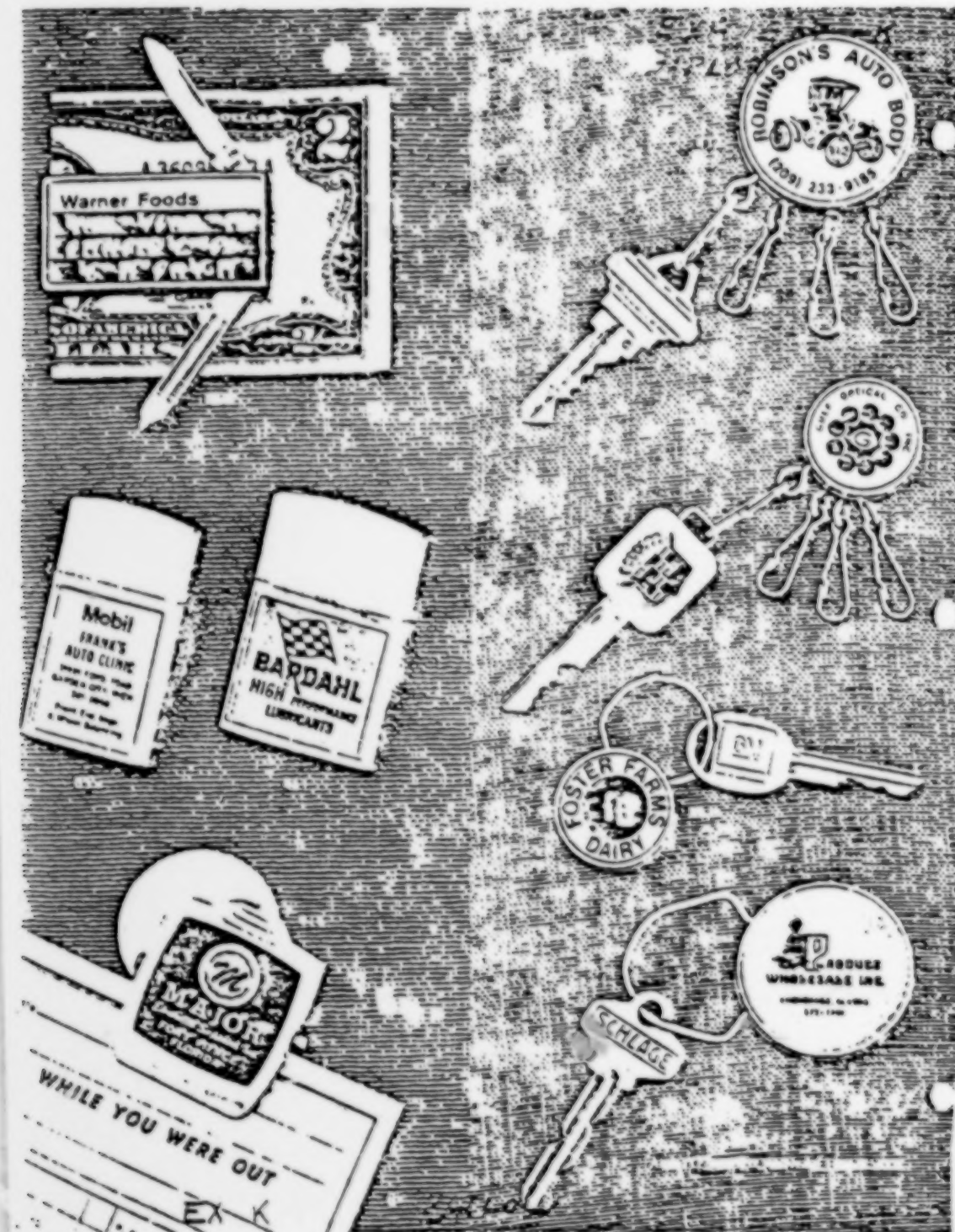


EXHIBIT K

BARLOW Utilities

TO BEST DISPLAY YOUR ADVERTISING MESSAGE

These useful products are designed to show your message boldly. They will be in constant use so that your advertising dollar gets full items are metal, chrome plated and covered by the BARLOW Lifetime Imprint is either on a vinyl panel or etched plate. (see page 33)

WITH ETCHED PLATE FULL COLOR ADVERTISING IMPRINT. Production: 90 days.

	100-499	500-999
B12P KEYHOLDER, same imprint both sides	1.60	1.55
B13P KEYHOLDER, same imprint both sides	1.60	1.55
B42P KEYHOLDER, same imprint both sides	1.35	1.30
B43P KEYHOLDER, same imprint both sides	1.35	1.30
B54P LIGHTER, imprint one side	2.50	2.45
B15P LIGHTER, imprint one side	2.50	2.40
B66P MONEY CLIP KNIFE	2.00	1.95
B78P MAGNETIC PAPER CLIP with self-stick steel disc	1.50	1.45

Up to four colors on silver or gold satin background. For extra color

WITH VINYL PANEL ADVERTISING IMPRINT. Production: 30 days.

B12V KEYHOLDER, same imprint both sides	1.75	1.70
B13V KEYHOLDER, same imprint both sides	1.75	1.70
B42V KEYHOLDER, same imprint both sides	1.50	1.45
B43V KEYHOLDER, same imprint both sides	1.50	1.45
B54V LIGHTER, imprint one side	2.50	2.45
B15V LIGHTER, imprint one side	2.50	2.45
B66V MONEY CLIP KNIFE	2.75	2.65
B78V MAGNETIC PAPER CLIP with self-stick steel disc	1.65	1.55

Imprint in any one color on any color background. Blue on silver top. For extra colors see below.

EXTRA COLORS: For each extra color	100-499	500-999
	10 cc	12 cc

DIFFERENT SECOND SIDE IMPRINT where possible, add \$20.00 (s).

NO ART OR DIE CHARGES for one design, trademark, logo etc. if reproducible. More than one design add \$10.00 (s) each design. Does not include creative art charged at time.

PROOFS: Black and white \$1.50, finished proof \$10.00 (s).

QUANTITIES: 100 pieces, add 25¢ each to 150 piece price. No copy charges.

NO IMPRINT:	B12	B13	B42	B43	B54	B15	B
Each	\$1.35	\$1.35	\$1.05	\$1.05	\$1.90	\$1.90	\$1

SHIPPING WT.							
Per 100 pieces	7 lb.	4 lb.	7 lb.	4 lb.	14 lb.	12 lb.	7

One shipping label per 100 pieces.
Packed each in a gift box.

PRODUCTION TIME AS ABOVE—P.O. BOX 105, LOS ANGELES, CALIFORNIA

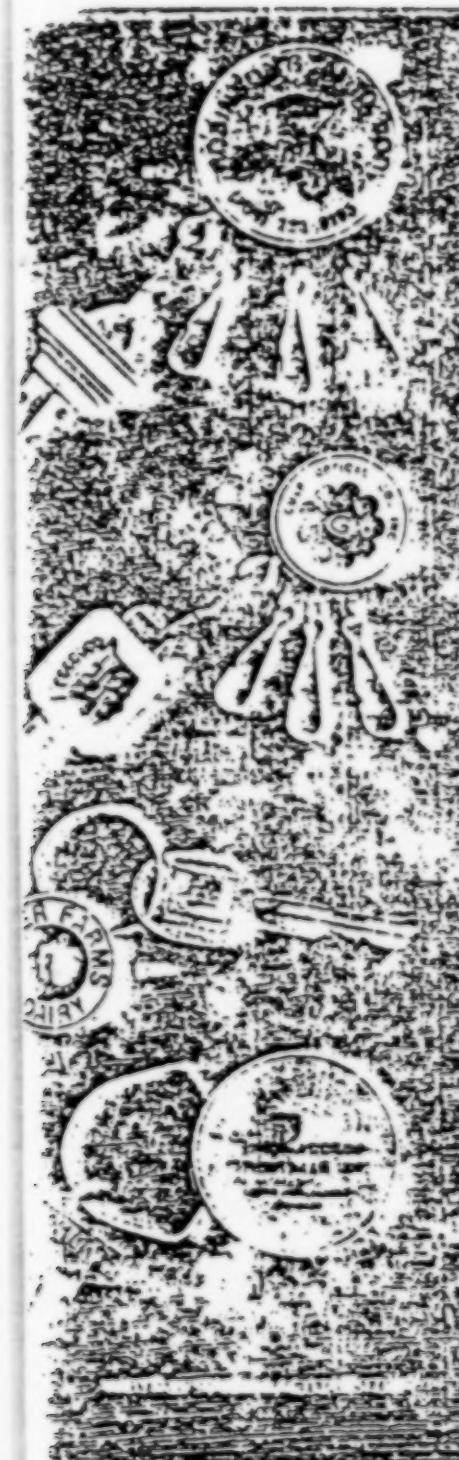
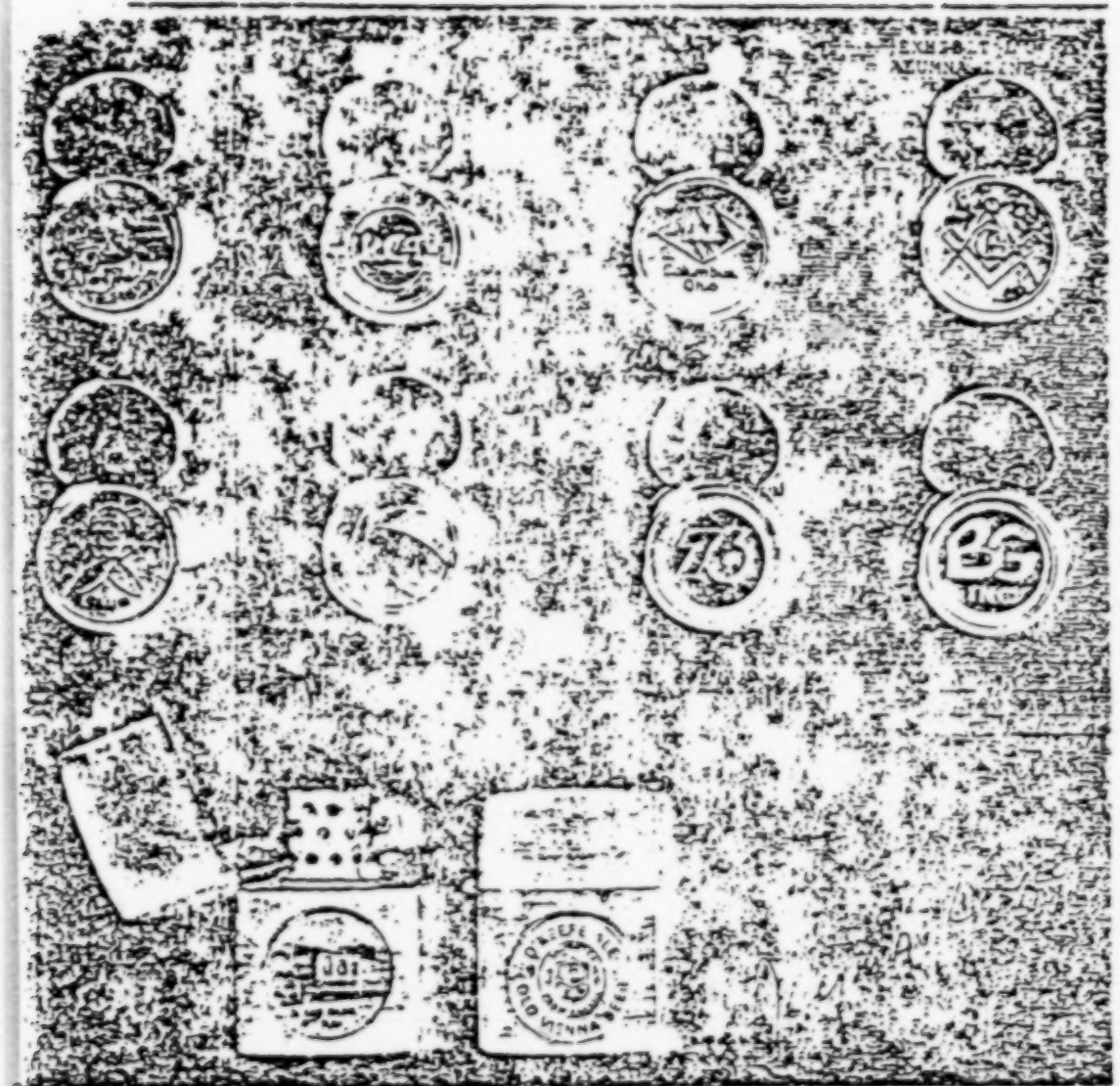


EXHIBIT L



GENERAL INFORMATION

Production Time: 3 - 4 weeks.

Die Charge: None on catalogued items.

Setup Charge: One time, on all first time orders, (\$8 (v)).
Reorders exempt.

Color Fill: Any may be used. Blue or black used when none is indicated.

Art Charges: Line drawings, etc., normal maximum is \$10 (vi).

Curved Copy: No Charge.

Sole Shipments and C.O.D.'s: No Charge.

Foreign Shipments: Forms must be supplied.

Proofs: On paper \$3.00 (xi); product sample \$10 (xi).

Masters: None normally available.

Second Color: \$4 (ti) per color per item on catalogued items.

Change of Copy: \$8 (vi) on all catalogued items.

Less Than Minimum: Not available.

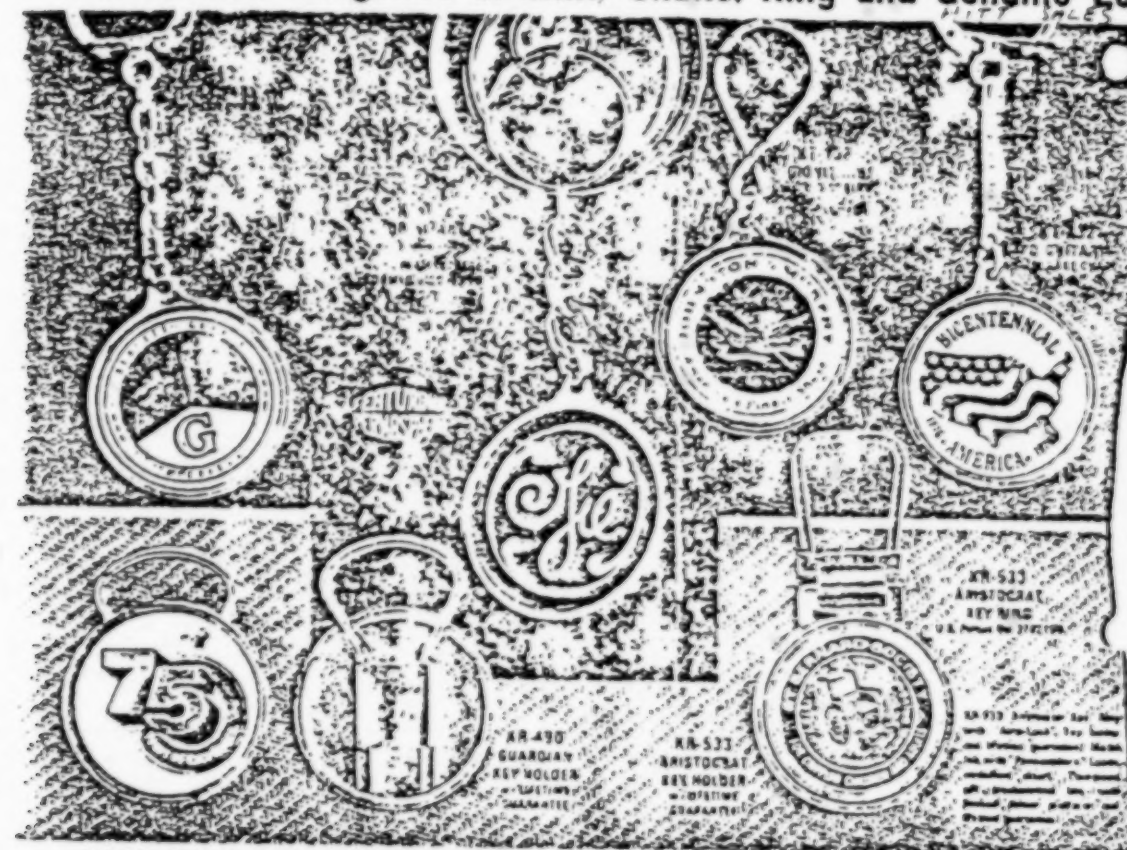
Insurance: Supplied by factory.

Union Label: Not available unless part of art work submitted.

Consecutive Numbering: \$4 (ti) per number; not color filled; up to six digits.

Packaging: No. 2-4 boxed; No. 550 1M per carton; all others cello bagged.

Permatized Elegance in Link, Snake, Ring and Genuine Leather



METAL KEY HOLDERS WITH NEW "PERMASPHERE" INSERTS AND PERMATIZED® COPY THAT WILL LAST FOREVER!

NEW "PERMASPHERE" DISC helps your copy come alive. As the light magnifies the message through the curved lens it bounces back at you in 3-dimensional clarity! Whether this disc carries your favorite design or a trademark, whether the reproduction is in two-tone gold or silver or a combination of six other colors, you can feel secure in knowing that the copy is the finest hot foil stamping in the world and Permatized® — guaranteed not to wear off — ever!

THE DIGNITARY ASSORTMENT: Elegantly styled, jewelry finished, water thin. Feature Permatized® copy hot stamped on colorful Lucite medallions. Includes gift packaging in attractive tuck-in box. 100 units approximately \$ 5 lbs.

GUARDIAN KEY RINGS: (KR-490) All metal construction, novel spring clip, unbreakable, spill proof, easy to open and close. Lifetime guarantee! Includes gift packaging in tuck-in box. 100 units approximately \$ 1-1/2 lbs.

ARISTOCRAT KEY RING: (KR-533) Metal job with colorful Lucite medallion insert. Two-piece gift presentation box with frosted velvet platform. Lifetime guarantee! Permatized® copy. 100 units approximately \$ 1 lb.

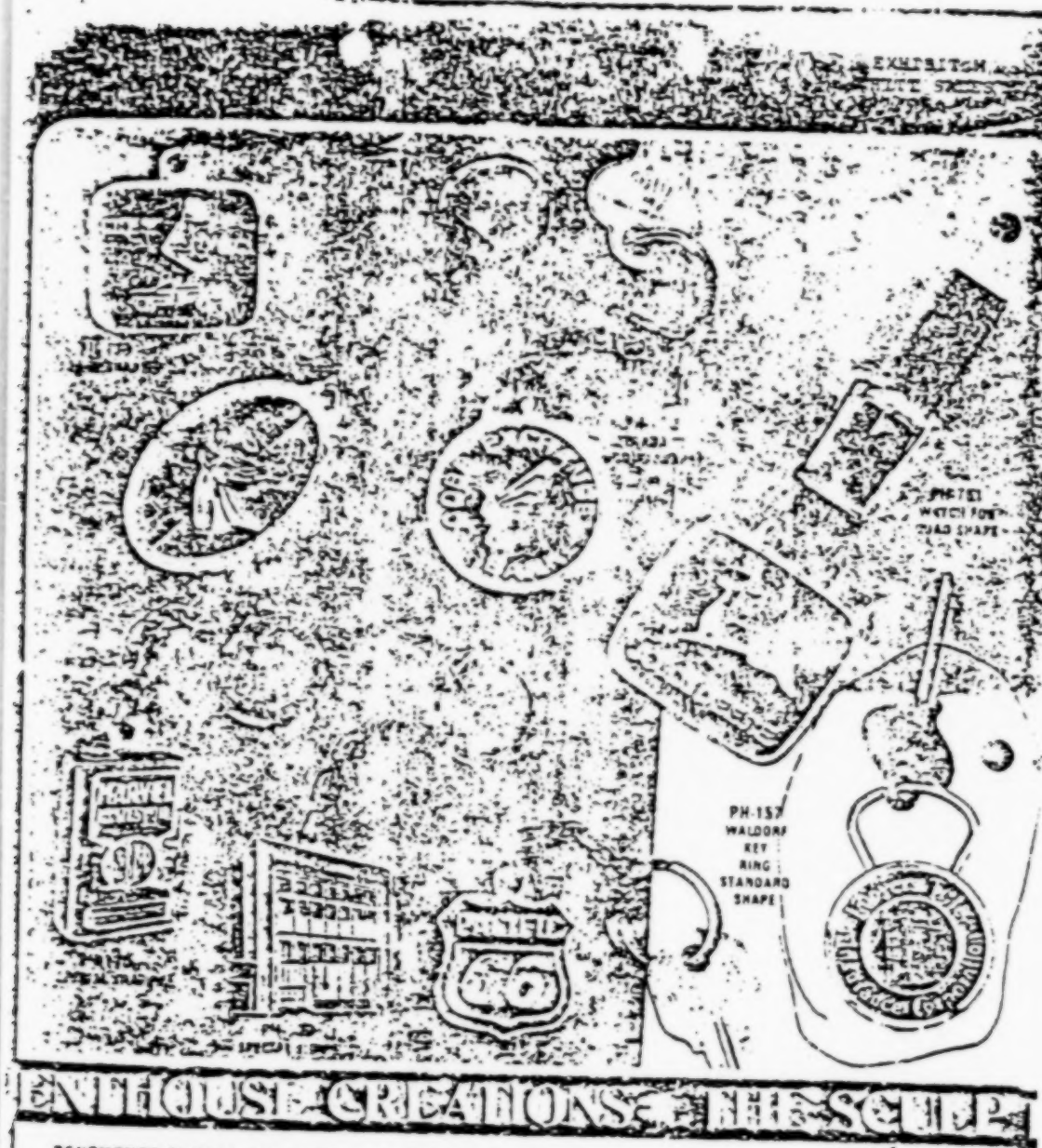
PRICE	100	250	500	750	1000
KT-131 Square w/ Link chain	75	75	87	95	100
KT-132 Square w/ Snake chain	75	75	87	95	100
KT-133 Square w/ Ring link	75	75	87	95	100
KT-134 Square w/ Snake chain	75	75	87	95	100
KT-490 Guardian Key Ring	1.25	1.25	1.00	97	95
KT-533 Aristocrat Key Ring	1.25	1.25	1.10	1.00	1.00



ASA-4115 Page 6

PERMATIZED COPY: From the amount of \$1.50 (10) units charge plus 7-1/2% (10) per point, minimum charge (Not available on 10-400)





ENTHUSIASTIC CREATIONS IN THE SCULPTURE

PENTHOUSE SHAPES AND SIZES.

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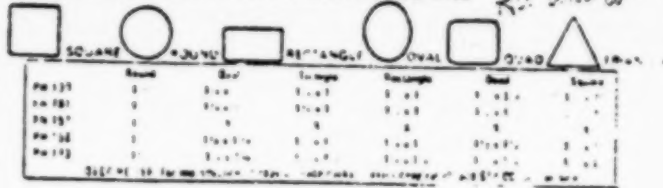
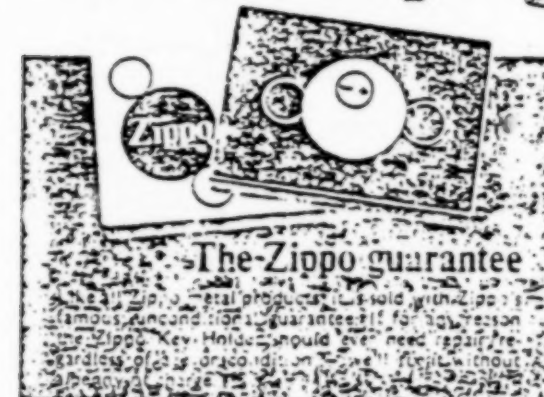
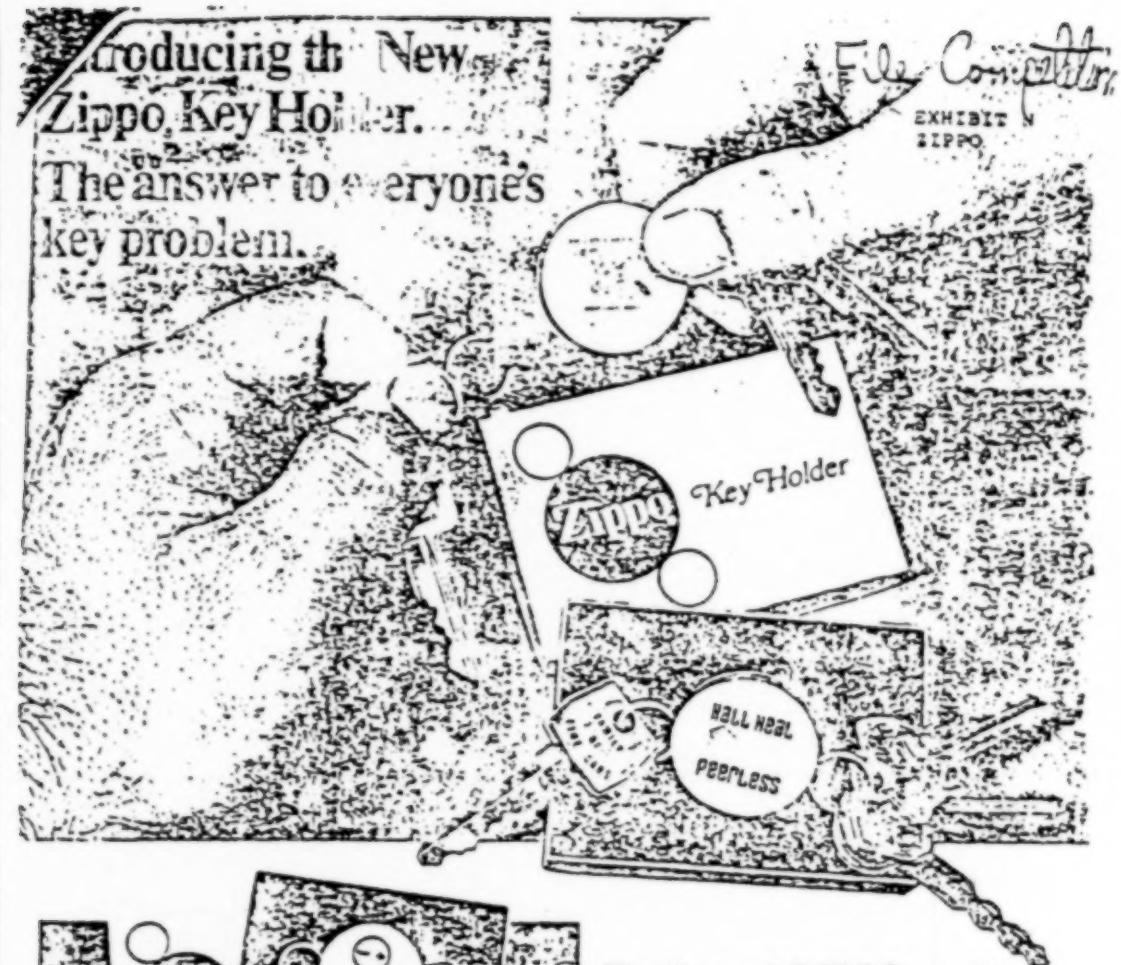


EXHIBIT N



The Zippo guarantee

The Zippo metal products are sold with the famous Zippo unconditional guarantee. If for any reason the Zippo Key Holder should ever need repair, regardless of cause or condition, it will be repaired or replaced without charge.

Traditional ZIPPO quality in a New Key Holder

Traditional Zippo quality in an instantly separable key holder with all the convenience of two key chains in one. For example, you can leave ignition key while car is in for repairs or washing and take your office or house keys with you.

Solid brass, with a brush chrome finish and with high quality stainless steel rings. Patent applied for.

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AFFIDAVIT OF JANE ARONSON
(FORMERLY JANE LEOPOLDI)

(Filed in U.S. District Court November 4, 1976)
(Caption Omitted in Printing)

I, Jane Aronson Hossfeld (formerly known as Jane Leopoldi), being duly sworn, deposes and says as follows:

1. On June 27, 1956 I signed an agreement with Quick Point Pencil Company by G. A. Goessling, president, which allowed Quick Point Pencil Company an exclusive right to make and sell key holders of the type shown in my application Serial No. 542,677, a copy of this agreement attached as Exhibit A to the Joint Stipulation of Uncontested Facts.

2. Prior to the time of said agreement with Quick Point Pencil Company, the subject key ring was secret subject matter, the pending U. S. patent application being a secret document under the law, and neither any agent of mine nor myself had disclosed the subject matter generally to any other person except under conditions of confidence.

3. Quick Point Pencil Company was one of the first few commercial enterprises to which the subject matter key ring was disclosed, under confidence, all such disclosures made within a short period of a few weeks.

4. No further attempts were made to disclose or exploit the subject key ring as disclosed in Serial No. 542,677 because of said agreement entered into with Quick Point Pencil Company as shown in Exhibit A.

I say nothing further.

/s/ JANE ARONSON HOSSFELD
(formerly JANE LEOPOLDI)

Signed this 26th day of August, 1976.

Subscribed and Sworn to Before Me this 26th day of August, 1976.

MARTA HERNANDEZ
Notary Public

AFFIDAVIT OF NORBERT LEOPOLDI

(Filed in U. S. District Court November 4, 1976)

(Caption Omitted in Printing)

I, Norbert Leopoldi, being duly sworn deposes and says as follows:

1. I am the owner of all right, title, and interest in U. S. Patent No. 3,126,729 issued March 31, 1964.

2. At approximately the time of the issuance of U. S. Patent No. 3,126,729, I did discuss and advise Mr. G. A. Goessling, the president of Quick Point Pencil Company of my intent to exploit said patent inviting Quick Point Pencil Company to take an interest thereunder.

3. In response to my invitation to secure a license under U. S. Patent No. 3,126,729, Mr. Goessling warned that any contemplated license arrangement with another manufacturer for said key holder as disclosed in U. S. Patent 3,126,729 would constitute a violation of the license agreement with Quick Point Pencil Company under Jane Leopoldi's application number 542,677.

4. A letter confirming Mr. Goessling's warning was received from Mr. Gravely, of the law firm Gravely, Lieder and Woodruff, counsel for Quick Point Pencil Company. A copy of this letter is attached as Exhibit D-2 to the Joint Stipulation of Uncontested Facts.

5. I, accordingly, made no further attempts to exploit the above said patent.

I say nothing further.

/s/ NORBERT LEOPOLDI

Signed this 26th day of August, 1976.

Subscribed and Sworn to before me this 26th day of August, 1976.

MARTA HERNANDEZ

Notary Public

AFFIDAVIT OF JOHN G. GOESSLING

(Filed in U.S. District Court November 5, 1976)

(Caption Omitted in Printing)

I, John G. Goessling, being duly sworn upon my oath, do hereby depose and state as follows:

1. This affidavit is submitted in support of plaintiff Quick Point Pencil Co.'s Cross-Motion for Summary Judgment herein.

2. I have been employed by Quick Point continuously since 1959, and have been President of Quick Point since 1968.

3. My father, G. A. Goessling, was President of Quick Point in 1956. My father died in 1968.

4. In the 1950's Quick Point was the only manufacturer of keyholders of the type "exclusively" licensed by defendant. In the late 1960's and 1970's at least eight competitors have begun manufacturing keyholders which are substantially identical to that which is described in defendant's license. These competitors are listed in the Stipulation, ¶ 14. While Quick Point's gross sales of the keyholders have generally increased since 1956, the market for the keyholders has expanded at a much greater rate. Quick Point's percentage of the market for keyholders of the type described in defendant's license has decreased during the late 1960's and 1970's. On information and belief, Quick Point's competitors do not pay royalties on the substantially identical keyholders manufactured and sold by them. The royalty payments to defendant add to Quick Point's cost and make it more difficult for Quick Point to compete in the sale of the keyholders.

5. The keyholders described in defendant's Patent Application Serial No. 542,677 have been manufactured by Quick Point Pencil Co. and sold to the public for the past 20 years. By its unrestricted sale of the keyholders, Quick Point has made full disclosure of defendant's keyholder invention, in every respect,

to the general public. As a result, defendant's keyholder invention has not been a "secret" device, process or mechanism in any respect at any time since it has been manufactured and sold by Quick Point.

/s/ JOHN G. GOESSLING

STATE OF MISSOURI }
COUNTY OF ST. LOUIS } ss.

Subscribed and sworn to before me this 5th day of November, 1976.

/s/ WILLIAM J. TRAVIS
Notary Public

My commission expires: 1-14-79.

MEMORANDUM FOR CLERK

(Filed in U.S. District Court November 4, 1976)

(Caption Omitted in Printing)

Come now the parties and hereby waive trial and submit the cause on the Joint Stipulation of Uncontested Facts and the pleadings. All briefs to be filed on or before Dec. 1, 1976.

/s/ J. MEREDITH

WILLIAM J. TRAVIS

Attorney for Plaintiff

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Of Counsel:

DOMINIK, KNECHTEL,

GODULA & DEMEUR

UNITED STATES DISTRICT COURT
Eastern District of Missouri
Eastern Division

QUICK POINT PENCIL COMPANY, a Missouri Corporation, <i>Plaintiff,</i>	}	No. 75-1056C(1)
vs.		
JANE ARONSON (formerly known as Jane Leopoldi), <i>Defendant.</i>		

JUDGMENT

(Filed in U. S. District Court December 29, 1976)

Findings of fact and conclusions of law dated this day are hereby made a part of this judgment.

It Is Ordered, Adjudged and Decreed:

(a) That the contract in question is valid and enforceable so long as plaintiff continues to make and sell the key holder item which is the subject of the contract;

(b) Plaintiff has the continuing liability to make royalty payments under said contract to defendant, which liability of the plaintiff can be terminated by the simple expediency of plaintiff ceasing to make and sell said key holder item;

(c) Plaintiff is ordered to pay to defendant the monthly royalty payments for the month of October, 1975 and continuing for each successive month thereafter with interest at the date of 6 percent per annum.

(d) The defendant shall recover of the plaintiff her costs.

/s/ JAMES H. MEREDITH

United States District Judge

Dated this 29 day of December, 1976.

UNITED STATES DISTRICT COURT
Eastern District of Missouri
Eastern Division

QUICK POINT PENCIL COMPANY, a Missouri Corporation, <i>Plaintiff,</i>	}	No. 75-1056C(1)
vs.		
JANE ARONSON (formerly known as Jane Leopoldi), <i>Defendant.</i>		

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Filed in U. S. District Court December 29, 1976)

This matter was submitted to the Court on agreed stipulation of facts, exhibits, affidavits and briefs. Plaintiff has sued for declaratory judgment. Both plaintiff and defendant filed motions for summary judgment. There are no facts in dispute. The Court makes the following findings of fact.

FINDINGS OF FACT

1. Plaintiff is a corporation organized and existing under the laws of the State of Missouri, with its principal place of business in Fenton, Missouri.

2. At all relevant times, Plaintiff was and is engaged principally in manufacturing products for the advertising specialty industry.

3. At all relevant times, Defendant was and is a resident of the State of Illinois. Her present married name is Jane Aronson Hossfeld.

4. On June 26, 1956, defendant entered into an agreement with the plaintiff which gives plaintiff the exclusive license and

right to make and sell key holders of the type shown in defendant's patent application No. 542,677, which was filed with the United States Patent Office on October 25, 1955. The application was disclosed by the defendant to the plaintiff's officers. The agreement was amended on June 27, 1956. The agreement provides that plaintiff would pay defendant royalties at the rate of 5 percent and if no patent was issued within five years of June 27, 1956 the royalties would be reduced to 2½ percent "as long as you [plaintiff] continue to sell the same."

5. Plaintiff commenced manufacturing key holders in July of 1956 and paid a five percent royalty on gross sales until June 26, 1961, when the royalty was reduced to two and one-half percent. On that date defendant had not been granted a patent on application No. 542,677.

6. On January 27, 1959, the parties executed a supplementary agreement, which provided for royalties on key holders sold in combination with rulers, watches and other items. This agreement did not otherwise alter any terms of the original agreements.

7. Plaintiff paid royalties to defendant in excess of \$200,000.00 from July 9, 1957 to September, 1975.

8. Defendant's key holder invention was never patented. In 1956 the United States Patent Office rejected defendant's first application. This was amended and rejected in 1957. An appeal was filed in the Patent Office to the Board of Appeals and on September 27, 1961, the Board of Patent Appeals held this was an unpatentable invention.

9. In the late 1960's and in 1970 competitors of the plaintiff began making key holders similar to the one in question and since no patent has been granted the competitors continued to make these similar key holders without paying royalties.

10. Defendant has demanded the monthly royalty payments for the month of October, 1975 which plaintiff refuses to make. Plaintiff continues to manufacture the key holder; however, its

share of the market has declined even though the number of key holders manufactured has increased.

CONCLUSIONS OF LAW

1. This Court has jurisdiction by virtue of 28 U. S. C. § 1332 in view of the fact that plaintiff is a Missouri corporation with its principal place of business in Fenton, Missouri, and defendant is a citizen and resident of the State of Illinois, and the amount of controversy exceeds \$10,000.00. This action is for declaratory judgment under 28 U. S. C. § 2201.

2. The language of the agreement is plain, clear and unequivocal and has no relation as to whether or not a patent is ever granted or is not granted. Plaintiff agreed to pay 5 percent royalty to defendant for the first five years and 2½ percent thereafter as long as it manufactured the key holders. Plaintiff continued to pay royalties long after the Patent Office rejected the patent of the defendant. This case is not controlled by *Compco Corporation v. Day-Brite Lighting, Inc.*, 376 U. S. 234 (1964) and *Sears Roebuck & Co. v. Stiffel Company*, 376 U. S. 225 (1964). These cases held that where a patent existed and was held invalid, then a member of the public could copy the article covered by the patent and could not be prevented from copying it.

3. This case is not controlled by *Lear, Inc. v. Adkins*, 395 U. S. 653 (1969), where the Court held that a licensee could challenge the validity of a patent. In that case at page 675, the Court stated:

"Consequently, we have concluded, after much consideration, that even though an important question of federal law underlies this phase of the controversy, we should not now attempt to define in even a limited way the extent, if any, to which the States may properly act to enforce the contractual rights of inventors of unpatented secret ideas."

4. In this case the plaintiff had disclosed to it the secret ideas of the defendant inventor. They agreed to pay a royalty

and continued to do so until they decided to cease such royalty which was long after the patent was denied. This contract is valid as long as plaintiff continues to manufacture and sell the key holders. If plaintiff desires to cease paying royalties, it must also cease making and selling the key holders.

5. Judgment will be entered in favor of defendant and against the plaintiff.

/s/ JAMES H. MEREDITH
United States District Judge

Dated this 29 day of December, 1976.

UNITED STATES DISTRICT COURT
Eastern District of Missouri
Eastern Division

QUICK POINT PENCIL COMPANY,
a Missouri Corporation,
Plaintiff,

vs.

JANE ARONSON
(formerly known as Jane Leopoldi),
Defendant.

No. 75-1056C(1)

NOTICE OF APPEAL

(Filed in U. S. District Court January 12, 1977)

Comes now plaintiff, Quick Point Pencil Company, and pursuant to Federal Rules of Appellate Procedure 3 and 4 hereby appeals to the United States Court of Appeals for the Eighth Circuit from the Judgment in favor of defendant and against plaintiff entered by this Court on December 29, 1976.

Dated this 12th day of January, 1977.

Plaintiff requests that the Clerk of the District Court serve notice of the filing of this notice of appeal by mailing a copy thereof to defendant's counsel of record pursuant to Federal Rule of Appellate Procedure 3(d).

WALTER M. CLARK
FRED LEICHT
WILLIAM J. TRAVIS

Attorneys for Plaintiff

611 Olive Street, Suite 1950
St. Louis, Missouri 63101
621-5070

UNITED STATES COURT OF APPEALS
For the Eighth Circuit

No. 77-1142

QUICK POINT PENCIL COMPANY, a
Missouri Corporation,

Appellant,

vs.

JANE ARONSON (formerly known as
Jane Leopoldi),

Appellee.

Appeal from the
United States Dis-
trict Court for the
Eastern District of
Missouri.

Submitted: October 14, 1977

Filed: December 8, 1977

Before LAY and ROSS, *Circuit Judges*, and LARSON, *Senior
United States District Judge.**

Ross, *Circuit Judge.*

Quick Point Pencil Company, a Missouri corporation, brought this action for declaratory judgment, naming Jane Aronson, an Illinois resident, as defendant. The amount in controversy exceeded the statutory \$10,000 and the district court had jurisdiction pursuant to 28 U.S.C. § 1332.¹ As the

* The Honorable Earl R. Larson, Senior United States District Judge for the District of Minnesota, sitting by designation.

1. 28 U.S.C. § 1332(a)(1) provides:

(a) the district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

basis for the action, Quick Point alleged a contract between the parties negotiated in June and July of 1956, wherein Aronson granted Quick Point an exclusive license to manufacture and sell a keyholder for which Aronson (formerly Jane Leopoldi) had submitted a patent application, Serial No. 542,677, on October 25, 1955. In exchange for the exclusive license Quick Point promised to pay Aronson a five percent royalty, to be reduced to two and one-half percent if no patent were granted within five years. Quick Point agreed to pay these royalties for as long as it continued to manufacture and sell the keyholders. Aronson never obtained a patent on the keyholder but Quick Point paid royalties under the agreement until October of 1975,² for a total of \$203,963.84.

In its complaint Quick Point alleged that the license agreement, providing for royalties on an unpatented and unpatentable article for an indefinite duration, conflicted with article I, section 8, clause 8 of the United States Constitution,³ and the Supremacy Clause.⁴ It sought declarations that the agreement was unenforceable and that it had no further liability to make royalty payments under the license. After the parties

2. Quick Point Pencil Company continues to make and sell the keyholders but is no longer making royalty payments under the agreement.

3. The United States Constitution provides:

[The Congress shall have Power]

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

U. S. CONST. art. I, § 8, cl. 8.

4. The Supremacy Clause provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, and any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U. S. CONST. art. VI, cl. 2.

filed a joint stipulation of uncontested facts and cross-motions for summary judgment, the district court took the case under submission without trial.

On December 29, 1976, the district court ordered, adjudged and decreed that the contract is valid and enforceable and Quick Point has the continuing liability to make royalty payments for as long as it manufactures the keyholders. He concluded that "[t]he language of the agreement is plain, clear and unequivocal and has no relation as to whether or not a patent is ever granted or is not granted." *Quick Point Pencil Co. v. Aronson*, No. 75-1056C(1) (E. D. Mo., filed Dec. 29, 1976). He determined that this case is not controlled by *Compco Corp. v. Day-Brite Lighting, Inc.*, 376 U. S. 234 (1964); *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U. S. 225 (1964); nor *Lear, Inc. v. Adkins*, 395 U. S. 653 (1969). Quick Point appeals from that judgment.

Quick Point contends that the district court erred in holding that this case is governed solely by contract law without regard for federal patent and antitrust considerations. It argues that the principles set forth in *Lear, Inc. v. Adkins*, *supra*, should be controlling here. Aronson contends that the contract contains an unequivocal promise to pay a royalty which is independent of the existence of a patent and enforceable as long as Quick Point continues to manufacture the keyholder.

The issue we must decide is whether Quick Point, a patent application licensee, is bound by the contractual provision requiring it to pay royalties for as long as it manufactures the item described in the patent application even though the licensor abandoned the application many years ago and the licensee's competitors are freely manufacturing the unpatented item.⁵ We

5. The dissent describes the contract as a "trade-secret licensing agreement." We doubt that the keyholder could ever have been characterized as a trade secret. Although it may have been an "invention," it was a relatively simple device and once marketed, it was completely disclosed. See RESTATEMENT OF TORTS § 757, comment b. ("Matters which are completely disclosed by the goods one markets cannot be his secret.")

(Footnote continued on next page.)

believe it is not so bound and reverse the district court's judgment.

The issue involves the relationship between state contract law and federal patent law. Although the Supreme Court has not decided the precise question, it has dealt with the conflict in similar contexts and has established principles that can be applied here.

We begin with the principle that federal law requires that all ideas in general circulation be dedicated to the common good unless they are protected by a valid patent. See *Lear, Inc. v. Adkins*, *supra*, 395 U. S. at 656; *Sears, Roebuck & Co. v. Stiffel Co.*, *supra*, 376 U. S. at 232-33; *Compco Corp. v. Day-Brite Lighting, Inc.*, *supra*, 376 U. S. at 238. In *Sears* the Court made the following statement concerning the relationship between state laws on unfair competition and the federal patent laws:

To allow a State by use of its law of unfair competition to prevent the copying of an article which represents too slight an advance to be patented would be to permit the State to block off from the public something which federal law has said belongs to the public. The result would be that while federal law grants only 14 or 17 years' protection to genuine

(Footnote continued from preceding page.)

The dissent agrees that the parties "intended that Aronson would in good faith attempt to patent the keyholder." The language from Milgrim's law review article quoted by the dissent further supports our conclusion that patent principles apply in this case. Milgrim states:

* * * the license reward for a trade secret tends to be a function of consideration for disclosure; for a patent, consideration for use * * *. Since a prospective trade secret licensee knows that his licensor cannot protect him from independent developers, he weighs the value of disclosure against the risks of relying on matter which is subject to third-party royalty-free use. Whether articulated or not, such balancing is the stuff that leads to hard negotiating for royalty rate and duration.

Milgrim, *Sears to Lear to Painton: Of Whales and Other Matters*, 46 N.Y.U.L. REV. 17, 30 (1971). Quick Point contracted for "the exclusive right to make and sell keyholders of the type shown in [Aronson's] application * * *." The agreement was not for disclosure but for the exclusive right to manufacture an invention that was to be patented.

inventions, see 35 U.S.C. §§ 154, 173, States could allow perpetual protection to articles too lacking in novelty to merit any patent at all under federal constitutional standards.

376 U. S. at 231-32.

We believe this principle applies to a state's contract law as well as to state unfair competition laws, *at least when a patent application is involved*. Further support for this belief is found in *Lear, Inc. v. Adkins*, *supra*, 395 U. S. at 677 (Black, J., joined by Warren, C. J., and Douglas, J., concurring in part and dissenting in part):

The national policy expressed in the patent laws, favoring free competition and narrowly limiting monopoly, cannot be frustrated by private agreements among individuals, with or without the approval of the State.

In *Lear* a patent licensee attempted to defend a suit for royalties by challenging the validity of the underlying patent. The situation was similar to the one involved here. While the patent application was pending the inventor and the manufacturer contracted for an exclusive license-royalty arrangement. Before the patent was allowed the manufacturer discontinued the royalty payments because it believed that the improvements were not sufficiently novel and that the inventor would never be able to obtain a patent.⁶ The patent office did grant a patent and the inventor sued for royalties. The Supreme Court of California refused to allow the manufacturer's patent invalidity defense holding that it was estopped by the contract to make that challenge. Finding that such a rule would significantly frustrate overriding federal policies, the United States Supreme Court reversed.

Under the rule announced in *Lear*, if Aronson had obtained a patent which was later determined to be invalid, Quick Point's

6. Unlike the contract involved here the parties had agreed that if no patent were issued or if a patent were later declared invalid, the manufacturer had the right to terminate the license.

liability would have terminated.⁷ In fact Quick Point could have challenged the validity of the patent and suspended payment of royalties while making the challenge. See *Lear, Inc. v. Adkins*, *supra*, 395 U. S. at 674.

Although Aronson's position is different than the inventor's in *Lear* because no patent was granted here, we believe, as the Supreme Court did, that "enforcing this contractual provision would undermine the strong federal policy favoring the full and free use of ideas in the public domain." *Id.* at 674.

Two other Supreme Court decisions lend support to our conclusion. In *Brulotte v. Thys Co.*, 379 U. S. 29 (1964), the Court held: "[A] patentee's use of a royalty agreement that projects beyond the expiration date of the patent is unlawful *per se*." *Id.* at 32. So if Aronson had obtained the patent for which she applied, after 17 years the contract with Quick Point would have been invalid and Quick Point's liability for royalties terminated.

In *Kewanee Oil Co. v. Bicron Corp.*, 416 U. S. 470 (1974), the Supreme Court faced another situation involving a conflict between state trade secret law and federal patent policies. In holding that state trade secret laws may protect unpatented but clearly patentable inventions without conflicting with the patent law policy of disclosure, the Supreme Court stated:

The possibility that an inventor who believes his invention meets the standards of patentability will sit back, rely on trade secret law, and after one year of use forfeit any right to patent protection, 35 U.S.C. § 102(b), is remote indeed.

Id. at 490.

Not only did Aronson not rely on trade secret protection, it is doubtful that her keyholder would have been entitled to any such protection. The Court stated:

7. The precise point at which a licensee's liability for royalties may terminate under the rule announced in *Lear, Inc. v. Adkins*, 395 U. S. 653 (1969), is a matter of some dispute. In *Lear*, the date of the patent's issuance was the decisive date, but *Lear* had challenged the patent before it issued. Here Quick Point sought a decree that it had no *further* liability for royalties, so the date of Quick Point's challenge becomes the crucial date.

A trade secret law, however, does not offer protection against discovery by fair and honest means, such as by independent invention, accidental disclosure, or by so-called reverse engineering, that is by starting with the known product and working backward to divine the process which aided in its development or manufacture.

Id. at 476 (footnote omitted).

Any member of the general public could have inspected Aronson's keyholder in an attempt to determine how to manufacture it.⁸ See *Sears, Roebuck & Co. v. Stiffel Co.*, *supra*, 376 U. S. at 231-32. Aronson did not take this chance. She applied for a patent, contracted with regard to that patent application,⁹ and cannot now argue that patent law principles are irrelevant to this case.¹⁰

Aronson believed her invention was patentable and she submitted a patent application. Had a patent issued she would have had 17 years of exclusive rights to her invention before it became part of the public domain. She approached Quick Point with her idea and the parties entered into a contract anticipating

8. That, in fact, is what has happened here. The parties stipulated, and the district court found, that in the late 1960's Quick Point's competitors began making keyholders similar to the one in question and since no patent was ever granted they continue to make these similar keyholders without paying royalties. No state law could prohibit this copying. See *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U. S. 225, 231-32 (1964).

9. Jane Aronson contends that the contract provision reducing the royalties if no patent issued within five years indicates that patent law was not considered by the parties nor applicable here. Quick Point suggests that that provision does not indicate that it anticipated that if no patent was issued within five years none would ever issue, but that it provides for the possibility that the patent would issue at a date more than five years after the contract was signed. We need not speculate as to what agreement the parties might have reached had no patent application been involved—one was.

10. In her brief Aronson argues that the pending patent application was *relevant* because it contained a disclosure that was maintained in secrecy by the United States Patent Office and thus was not available to the general public. On the other hand she contends that the agreement was *independent* of the existence of a patent.

that a patent would issue. If that had happened, under *Brulotte v. Thys Co.*, *supra*, 379 U. S. at 32, Quick Point's liability for royalties would have ended after 17 years *in spite of the contract*. Furthermore, if a patent had issued and Quick Point had later questioned the patentability of the keyholder, under *Lear, Inc. v. Adkins*, *supra*, 395 U. S. at 674, it could have stopped making royalty payments and challenged the patent in court. If such a challenge were successful, Quick Point's liability for payments would have ended *in spite of the contract*.¹¹ We do not believe the result should be different here. The principles discussed above strongly indicate that any other conclusion would violate public policy.

We conclude that Quick Point, who contracted for an exclusive license to manufacture and sell an item for which the licensor had submitted a patent application, is not bound by a provision for prolonged royalty payments since the licensor abandoned the application¹² and no patent was ever obtained.¹³

The judgment of the district court is reversed and the case remanded for disposition consistent with this opinion.

LARSON, *Senior District Judge*, Dissenting.

I respectfully dissent.

The majority appears to acknowledge that the contract here was not conditioned on the issuance of a patent.¹ Yet it at-

11. Although the parties here did not expressly condition their agreement on the issuance of a patent, under the facts of this case and in view of our decision, we believe the result would be the same as in *Lear, Inc. v. Adkins*, *supra*.

12. It is interesting to note that Aronson abandoned her effort to get a patent in September of 1961, about six months after her husband applied for a patent on a similar device. He received a patent in 1964.

13. In view of our conclusion we need not reach Quick Point's contentions that the license was in restraint of trade and violated the federal antitrust laws, or that under Missouri law the license was not enforceable.

1. See footnote 11 of the majority opinion, *supra*.

tributes considerable importance to the fact that a patent application was "involved" and appears to hold that a private agreement which "involves" an abandoned patent application may not be enforced as a matter of federal policy.² Because that holding appears to be based on a characterization of the issues with which I disagree, I deem it necessary to discuss in some detail my understanding of the legal principles governing this case.

First, the nature of the contract between Quick Point and Aronson should be clarified. In retrospect, Quick Point made a bad bargain. It agreed to pay royalties on the Aronson invention as long as it continued to make and sell the same, and the agreement, as the district court found, had *no relation to whether or not the item was ever patented. Quick Point Pencil v. Aronson*, No. 75-1056C(1) (E. D. Mo., filed Dec. 29, 1976).³ The parties no doubt intended that Aronson would in good faith attempt to patent the keyholder, but Quick Point nevertheless bound itself to pay even if those efforts failed. It should be emphasized that had the contract been *conditioned* on the issuance of a patent, it would have terminated long ago by its own terms. Similarly, had Aronson abandoned the application in bad faith while there was a reasonable likelihood of success with the Patent Office, Quick Point might very well have had a breach of contract remedy. But there is no indication whatsoever that Aronson exercised bad faith and one can only assume that the parties acquiesced in the 1961 Patent Office's determination that the invention was unpatentable or, at least, agreed that no further efforts were required.

2. See footnote 9 and text accompanying notes 12 and 13 of the majority opinion, *supra*.

3. The majority notes that had a patent issued Quick Point would have had to pay royalties only for the patent period, in light of *Brulotte v. Thys*, 379 U.S. 29 (1964). That is true, but in this context is relevant only to the patent misuse analogy that appellant appears to be drawing and which I have discussed at footnote 9, *infra*. It might also be pointed out that had a valid patent issued in 1961, when it was in fact denied, Quick Point would still be liable for royalties until 1978.

With the nature of the contract thus identified, and hypothetical possibilities set aside, the core of this controversy becomes clear: these parties entered into a trade-secret licensing agreement⁴ that provided for payment of royalties for an indefinite time on an item that proved to be unpatentable and which others have now copied. One party now seeks to be released from its contractual obligation. Thus stated, this case is virtually on all fours with *Warner-Lambert Pharmaceutical Co. Inc. v. John J. Reynolds, Inc.*, 178 F. Supp. 655 (S. D. N. Y. 1959), *aff'd*, 280 F.2d 197 (2d Cir. 1960). In *Warner-Lambert*, a manufacturer agreed to make payments to the discoverer of the formula for Listerine as long as it continued to manufacture the product. The formula eventually became public, after many years under the agreement, and Warner-Lambert sought release from the contract. The court upheld the agreement, and established the rule that "A license agreement with respect to a trade secret may last indefinitely and does not, in absence of express contrary language, terminate when the secret is disclosed." 2 Callman, *Unfair Competition and Trademarks* § 57(b) (3rd ed. 1968). This court must decide whether, in light of various federal policies expressed by the Supreme Court since the *Warner-Lambert* decision, the result on these facts should be different than it was in the Listerine controversy.⁵

4. The majority questions characterizing this agreement as a trade-secret licensing agreement, noting that the keyholder was a simple device and could be copied. The fact remains that the keyholder was secret at the time it was disclosed and it was not successfully copied until the late 1960's, long after it had been marketed. It is precisely because disclosure and marketing may lead to copying that parties will enter into express contracts extending payment obligations beyond the duration of secrecy. The question is whether such agreements are enforceable as a matter of contract law, not whether, absent an express agreement, trade secret law would afford protection once copying has occurred.

5. It should be noted that Quick Point did not argue on appeal that the contract was unenforceable under state law for being of infinite or uncertain duration. This subject was treated at length in

(Footnote continued on next page.)

Before reaching the issues that seem decisive here, some of appellant's argument should be addressed. Appellant recognizes the parallels between this case and *Warner-Lambert* but contends that the fact that a patent application was "involved" distinguishes this case and invokes certain policies expressed in *Lear, Inc. v. Adkins*, 395 U. S. 653 (1969). This contention is apparently what persuaded the majority to analyze the issues as it did, but I find appellant's arguments unpersuasive and a brief explanation may clarify my view that the "involvement" of a patent application has no bearing on the resolution of this case.

In the first part of the *Lear* decision the Supreme Court abolished the doctrine of patent licensee estoppel, 395 U. S. at 670-71. In the second portion of the opinion, upon which appellant relies here, the Supreme Court considered whether *Adkins* could claim contractual royalties for the entire patent period based on the pre-issuance disclosure of trade secrets:

The inventor does not merely argue that since *Lear* obtained privileged access to his ideas before 1960, the company should be required to pay royalties accruing before 1960 regardless of the validity of the patent which ultimately issued. He also argues that since *Lear* obtained special benefits before 1960, it should also pay royalties during the entire patent period (1960-1977), without regard to the validity of the Patent Office's grant. We cannot accept so broad an argument. *Id.* at 672.

(Footnote continued from preceding page.)

Warner-Lambert Pharmaceutical Co., Inc. v. John J. Reynolds, Inc., 178 F. Supp. 655 (S. D. N. Y. 1959), *aff'd*, 280 F. 2d 197 (2d Cir. 1960), and that court took into account Missouri law, which would probably govern the Quick Point contract. Although there is a canon of contract construction which provides that an obligor of a contract indefinite as to duration will be released from his duty after a reasonable time, *see Freeport Sulphur Co. v. Aetna Life Ins. Co.*, 206 F. 2d 8 (5th Cir. 1953), it is somewhat doubtful that that canon would apply here—Quick Point had within its power the ability to terminate the contract of its own accord by ceasing manufacture; it was also permitted to terminate if it became "dissatisfied" with the volume of sales.

Quick Point contends that there is no distinction between the situation in *Lear*, where a patent application is licensed, a patent issues, and the patent is then declared invalid and the situation here, where a patent application is licensed, and the Patent Office then refuses to issue a patent. In neither case should royalties based on disclosure of a trade secret be enforced.

But there is a clear distinction between the two situations which becomes readily apparent upon examining the major policy underpinning the Supreme Court's decision. The Court was wary of enforcing the claimed trade secret royalties in *Lear* because as a practical matter it would undercut the abolition of the licensee estoppel doctrine:

Adkins' position would permit inventors to negotiate all important licenses during the lengthy period while their applications were still pending at the Patent Office, thereby disabling entirely all those who have the strongest incentive to show that a patent is worthless. 395 U. S. at 672.

In other words, if the trade secret disclosed in a licensing agreement coincided exactly with what was made public in the patent,⁶ and the licensee was nevertheless bound to pay on the basis of the initial disclosure, he would have no incentive to challenge the patent itself—his obligation would remain the same whatever the patent's validity. The public would thus be deprived of an effective challenge to patentability and would go on "paying tribute to [a] would-be monopolist." *Id.* at 670. This policy of "unmuzzling" the licensee, and even giving him a positive incentive to challenge patent validity, is not implicated in the situation where no patent issues, and where in fact the secret disclosed must be regarded as unpatentable.⁷ In *ig-*

6. The trade secrets that *Adkins* disclosed were precisely the same as those disclosed in the issued patent, *see Brief for Respondent Adkins* at 49-50. *See generally*, McCarthy, " 'Unmuzzling' the Patent Licensee: Chaos in the Wake of *Lear v. Adkins*," 45 Geo. Wash. L. Rev. 429 (1977).

7. For other cases in which the parties' express contract was not predicated on the issuance of a patent, but a patent application was

(Footnote continued on next page)

noring this policy, appellant has essentially construed *Lear* as calling into question the validity of *any* trade secret agreement.⁸ In light of the Supreme Court's subsequent decision in *Kewanee Oil Co. v. Bicron Corp.*, 416 U. S. 470 (1974), it is clear that *Lear* cannot be extended so far.

Kewanee was a trade secret misappropriation case in which the Supreme Court held that as a general rule state trade secret law is not incompatible with federal patent policy. More specifically, the Supreme Court implicitly approved the enforcement of trade secret licensing agreements:

Another problem that would arise if state trade secret protection were precluded is in the area of licensing others to exploit secret processes. The holder of a trade secret would not likely share his secret with a manufacturer who cannot be placed under binding legal obligation to pay a license fee or to protect the secret * * *. Instead, then, of licensing others to use his invention and making the most efficient use of existing manufacturing and marketing structures within the industry, the trade secret holder would

(Footnote continued from preceding page.)

"involved" and the courts held that *Lear* did not govern the case, *see Wrigley v. Compudine Corp.*, 390 F. Supp. 478 (E. D. Pa. 1975); *Heltra Inc. v. Richen-Gemco, Inc.*, 395 F. Supp. 346 (1975), *rev'd on other grounds*, 191 U. S. P. Q. 663 (4th Cir. 1976).

8. Appellant's reading of *Lear* also relies on another portion of the opinion. The Supreme Court declined to decide whether Adkins could claim royalties accruing *before* 1960, the date when the patent issued, since "it squarely raises the question whether, and to what extent, the States may protect owners of *unpatented* inventions who are willing to disclose their ideas to manufacturers only upon payment of royalties." 395 U. S. at 674. It is this portion of *Lear* which raised many questions as to the validity of state trade secret law in general; some of those questions were, of course, answered by *Kewanee Oil Co. v. Bicron Corp.*, 416 U. S. 470 (1974). Appellant claims that this passage in *Lear* means states cannot protect owners of unpatented inventions in *all* circumstances and the Quick Point-Aronson contract is one of them. It is self-evident that that argument assumes its own conclusion: analysis of underlying policies in *Kewanee* and other cases is the only way to determine whether the contract conflicts with federal law. *See* discussion at pages 77-82 of this opinion.

tend either to limit his utilization of the invention, thereby depriving the public of the maximum benefit of its use, or engage in the time-consuming and economically wasteful enterprise of constructing duplicative manufacturing and marketing mechanisms for the exploitation of the invention. The detrimental misallocation of resources and economic waste that would thus take place if trade secret protection were abolished with respect to employees or licensees cannot be justified by reference to any policy that the federal patent law seeks to advance. 416 U. S. at 486-87 (citations omitted).

See also Painton & Co. v. Bourns, Inc., 442 F. 2d 216 (2d Cir. 1971); *Sinclair v. Aquarius Electronics, Inc.*, 184 U.S.P.Q. 682 (Cal. Dist. Ct. of Appeal, 1st Dist., Div. Two, 1974). *Kewanee* thus limited the potentially broad implications of *Lear* that appellant urges and it is *Kewanee* rather than *Lear* to which this court should look for guidance in answering the question presently before it.

Appellant contends that this case is distinguishable from *Kewanee* because the trade secret disclosed is no longer secret. It is true that *Kewanee* dealt not with an express contract extending trade secret royalties beyond the duration of secrecy, but with the more typical misappropriation case in which there are inherent limitations upon the protection the trade secret owner receives. Absent an express contract, the owner's rights against even those who learned the secret from a confidential relationship end within a certain time after, for example, independent discovery by a third party, *see* 416 U. S. at 489-90. That is not to say, however, that duration is determinative in ascertaining whether trade secret law conflicts with patent law, for trade secret protection can last significantly longer than patent protection, as in the famous example of the long-secret formula for Coca-Cola. What the Supreme Court focused on in *Kewanee* was whether the existence of trade secret protection would provide a significant disincentive to patent, thereby impinging upon the congressional objective of encouraging pub-

lic disclosure of important inventions and keeping them in the public domain. *Id.* at 484. The Court concluded that whatever disincentives trade secret protection might provide were not significant enough to require federal preemption of the states' laws. The same type of analysis is helpful in deciding whether overriding federal policies require preemption of state contract law and a consequent refusal to enforce the Quick Point-Aronson bargain.

As to whether the contract here conflicts with the federal policy of leaving things in the public domain once they have become public, the answer seems obvious. Strangers to this contract have every right to copy the keyholder and they have done so. This distinguishes the situation from the problem involved by the enforcement of unfair competition laws faced in *Sears, Roebuck & Co. v. Stiffel Co.*, 376 U. S. 225 (1964); see *Sinclair v. Aquarius Electronics, Inc. supra*, 184 U. S. P. Q. at 686. The more difficult question is whether the enforcement of contracts such as this creates a significant disincentive to patent because, by extending a right to royalties beyond the duration of secrecy, the trade secret licensor insulates himself from the effects of public disclosure. See 74 *Harvard L. Rev.* 409, 411 (1960). Since a patent royalty agreement cannot extend beyond the patent's expiration date, *Brulotte v. Thys*, 379 U. S. 29 (1964), the potential availability of a much longer royalty period through private agreement might make the latter alternative much more attractive.⁹

9. In addition to the danger that extended trade secret protection will cause a weakened incentive to patent, there may be another theory underlying this argument, namely, that freedom to contract should be circumscribed by a "trade secret misuse" doctrine just as it is circumscribed by the patent misuse doctrine expressed in *Brulotte v. Thys*, 379 U. S. 29 (1964). I think it unnecessary to discuss this theory in much detail; the patent misuse doctrine is to prevent a party from using his extraordinary legislative grant of exclusivity as leverage to extend the benefits he has obtained. The trade secret owner has no such leverage; he cannot guarantee his licensees freedom from encroachment by others. See Milgrim, *Trade Secrets*, § 6.05[2][d] (1977).

It would perhaps be sufficient for the purposes of this case to point out that the "disincentive" argument has little force where an unpatentable invention is involved, for there is no great federal interest in encouraging attempts to patent unpatentable subject matter, and only the slightest gain to be derived from increasing the number of applications on items of dubious patentability. See *Kewanee Oil Co. v. Bicron Corp.*, *supra*, 416 U. S. at 484-89. But even from a broader point of view, the disincentive argument is not particularly compelling. Although a trade secret licensor might well prefer to obtain a private agreement ensuring royalties for an extended time rather than to license a patent for 17 years, licensees are most apt to think differently. In other words, it is from the perspective of the bargaining situation that the risk of deterrence from patent application must be assessed, and in most cases the value of patent protection will be important enough to the licensee that the trade secret owner would not be able to extract a contract of indefinite duration beyond the point of secrecy, when other parties can copy the item royalty-free. Even in the instant case, where Quick Point for whatever reason agreed to such a contract, there was nevertheless every incentive for Aronson to patent. Quick Point would have paid much higher royalties for the patent period and Aronson would not have run the risk that Quick Point would cease manufacture and leave her with an unsellable idea, already copied by others. A well-known advocate of trade secret protection has expressed the distinctions between the interests sought to be served by patent law and those served by trade secret law, and has discussed the very issue present in this case:

[T]he license reward for a trade secret tends to be a function of consideration for disclosure; for a patent, consideration for use * * *. Since a prospective trade secret licensee knows that his licensor cannot protect him from independent developers, he weighs the value of disclosure against the risks of relying on matter which is subject to third-party royalty-free use. Whether articulated

or not, such balancing is the stuff that leads to hard negotiating for royalty rate and duration.

* * * * *

In light of these distinctions, and the effect that they have on the bargaining between the parties, it is my view that the rights and duties bargained for and embodied in the trade secret license should govern. If a trade secret licensee does not elect to condition continuing royalty on continuing secrecy, we may assume that the value of immediate disclosure weighed heavily. It is no more appropriate for a court of law, after the fact, to renegotiate a trade secret license agreement when the subject matter becomes generally known than it is for a court to set aside a contract to purchase a house * * * where the purchaser could have driven a better bargain. Thus, leaving the parties where their bargain has placed them in a trade secret licensing context is not inconsistent with holding that a patent licensor may not require royalties beyond the life of the patent. Milgrim, *Sears to Lear to Painton: Of Whales and Other Matters*, 46 N.Y.U.L. Rev. 17, 30, 31 (1971).

See also Milgrim, *Trade Secrets*, § 6.05[2][d], § 6.05[4] (1977); *Sinclair v. Aquarius Electronics, Inc.*, *supra*. I find that analysis persuasive.

In summary, the contract here was negotiated at arms length. There is no evidence of misrepresentation, bad faith, or inequality of bargaining power. Quick Point had the opportunity to assess its risks and took a gamble and has called upon the court for relief because it did not like the results. I conclude that no federal patent policies bar the enforcement of the contract according to its terms. Moreover, although I do not dismiss the possibility that a trade secret license can run afoul of the Sherman Act, I find nothing in this record that establishes an unreasonable restraint of trade as a result of this agreement. Finally, appellant's argument that it should be

excused from performance because the purpose of the contract has been frustrated is wholly without merit.

I would affirm the district court.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

JUDGMENT

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

No. 77-1142. September Term, 1977

QUICK POINT PENCIL COMPANY,

Appellant,

vs.

JANE ARONSON,

Appellee.

Appeal from the United States District Court for the Eastern District of Missouri.

This Cause came on to be heard on the record from the United States District Court for the Eastern District of Missouri and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, reversed.

And it is further ordered by this Court that this cause be and is hereby remanded to the said District Court for proceedings consistent with the majority opinion of this Court.

December 8, 1977

COSTS TAXED IN FAVOR OF APPELLANT

Taxation of costs in Case No. 77-1142:

Clerk's docketing fee:	\$ 50.00
Costs of printing 5 copies of appendix:	\$ 705.04
Costs of printing 10 copies of appellant's brief:	\$ 429.59
Total costs of Appellant for recovery in the U. S. District Court from Appellee:	\$1,184.63

UNITED STATES COURT OF APPEALS

For the Eighth Circuit

September Term, 1977

77-1142

QUICK POINT PENCIL COMPANY

Appellant,

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JANE ARONSON,

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trict of Missouri

The Court having considered petition for rehearing en banc filed by counsel for appellee and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

January 4, 1978